Office Supreme Court, U.S.
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JAN 3 1964
JOHN F. DAVIS, CLERK

No. 726

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

J. B. ACTON, INC., *Appellant*

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement	4
The Questions Are Substantial	8
Conclusion	11
Certificate of Service	12

Appendix A (Judgment and opinion in the Court below in J. B. Acton, Inc. v. United States, et al, Civil Action No. 13879-4 ..... 1a

Appendix B (Order of the Interstate Commerce Commission in J. B. Acton, Inc.—Investigation and Revocation of Certificate, 89 M.C.C. 59) 10a

CITATIONS

Cases:

American Trucking Association v. U. S., 364 U.S. 1 .. 2
I. C. C. v. J. T. Transport Co., 683 U.S. 81 2
U. S. v. Drum, 368 U.S. 370 2

Statutes:

Administrative Procedure Act, 5 U.S.C.A.:

Section 1009 2
Section 1007 3

Interstate Commerce Act, 49 U.S.C.A.:

Sec. 204(c) 2
Sec. 212(a) 2
Sec. 304(c) 2
Sec. 306 4
Sec. 312(A) 2

Page

Judicial Code, 28 U.S.C.A.:

Sec. 1253 2
Sec. 1336 2
Sec. 1338 2
Sec. 2101(B) 2
Sec. 2284 2
Sec. 2321-2325 2

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Missouri, Western Division, is reported at 221 Fed. Supp. 174. The decision of the Interstate Commerce Commission appears at 89 MCC 59. Appended hereto marked Appendix A and Appendix B to this Jurisdictional Statement are copies of each of those opinions.

JURISDICTION

This action was originally brought under the provisions of Secs. 204 (c) and 212 (a) of the Interstate Commerce Act, 49 USCA 304 (c) and 312 (A), Sec. 10 of the Administrative Procedures Act, 5 USCA 1009 and Secs. 1336, 1338, 2284, and 2321 to 2325, inclusive, of the Judicial Code, 28 USCA 1336, 1398, 2284 and 2321 to 2325, inclusive, with the United States being named as a party defendant pursuant to 28 USCA 2322.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred upon this Court by Secs. 1253 and 2101 (b) of the Judicial Code, 28 USCA 1253 and 2101 (b). The original action was brought for the purpose of setting aside the appended order of the Interstate Commerce Commission. The judgment of the District Court on the action below was entered therein on September 9, 1963, and a timely notice of appeal from that decision was filed, October 29, 1963.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case:

> *ICC* v. *J-T Transport Company*, 368 U.S. 81; *United States* v. *Drum*, 368 U.S. 370; and *American Trucking Associations, Inc., et al*, v. *U.S., et al.*, 364 U.S. 1.

STATUTES INVOLVED

Primarily involved are two sections of the Administrative Procedure Act, specifically 5 USCA, Sec. 1009 (e), which provides:

> "*Scope of review*—So far as necessary to decision and where presented the reviewing court shall de-

cide all relevant questions of law, interpet constitutional and statutory provisions and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of Secs. 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reveiewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

and 5 USCA, Sec. 1007 (b) which in part provides:

"All decisions (including initial, recommended, or tenative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof."

QUESTIONS PRESENTED

1. Did the ICC and the Court below err in concluding that a certificate of public convenience and necessity issued to appellant and providing for its transportation of

"Oil-field equipment, machinery, and materials."

prohibited the handling of "machinery" and "materials" other than "oil-field machinery" and "oil-field materials"?

2. Did the Court below err in concluding that the commodity description

"oil-field equipment, machinery, and materials,"

was "patently ambiguous."?

STATEMENT OF THE CASE

The appellant, J. B. Acton, Inc., is a common carrier, by motor vehicle, in interstate or foreign commerce, operating as such under "grandfather clause rights" held by appellant and its predecessors since the inception of the Motor Carrier Act.[1] Particularly, appellant in No. MC 80847, Sub. 2, was granted a certificate of public convenience and necessity containing the following commodity description: "Oil-field equipment, machinery, and materials." This authority was granted in a corrected certificate which bears a *nunc pro tunc* date of March 9, 1956, and corrects an original certificate which bore the same date. These operating rights arose out of Docket MC-4884 in which, on January 18, 1941, in a "grandfather" application, the Commission issued the original certificate involving the operating rights in question to one S. R. Hazelrigg in which the commodity description was identical with that issued to appellant on March 9, 1956. These rights were transferred pursuant to a transfer application approved by the Commission in Docket MC-80847, Sub. 2, on April 24, 1950. However, when the operating rights formerly held by J. B. Acton, as an individual, were

[1] Interstate Commerce Act, 49 U.S.C. Sec. 306.

subsequently transferred to J. B. Acton, Inc., in Docket MC-FC-58586, the original certificate issued to J. B. Acton, Inc., appellant herein, on March 9, 1956, the commodity description read as follows:

"Oil-field equipment, machinery, and materials."

On an objection having been made to this unauthorized change (unbroken underlining), the Commission reissued the *nunc pro tunc* corrected certificate under the original date of March 9, 1956, in the form which it now stands, which is "oil-field equipment, machinery, and materials."

Pursuant to the operating rights therein granted, the appellant herein, J. B. Acton, Inc., filed with the Commission, as its rules require, a tariff covering the commodities for which it conceived that it had operating authority, including those which fit and would be included in the general description of machinery and materials and those which fit the description of oil field equipment.

As disclosed by the decisions (Appendices A and B), appellant has continuously hauled a variety of machinery and materials, including tractors, heat exchangers, castings, used laundry machinery, jet engines, structural steel channels, steel rails, water fuel tanks, nuts and bolts, iron and steel girders, priming and coating machines, and a variety of other shipments which were encompassed by the description of machinery and materials and not otherwise related to oil field operations.

The proof adduced before the Examiner, which was the basis for the ruling below in the District Court, demonstrated that before acquiring rights which it

presently has, appellant sought and received expert advice and counsel in respect to the transportation which could lawfully be performed under the certificate to be acquired and reviewed the history of transportation which had thereunder been performed. The proof also developed that approximately 60% of appellant's revenue results from transportation of machinery and materials that can in nowise be characterized as "oil field machinery" or "oil field materials", but does constitute the transportation of machinery and of materials, such as authorized by a certificate, within the ordinary understanding and construction of the English language.

As disclosed by Appendix B, the Commission concluded that the right to transport

> "Oil-field equipment, machinery, and materials."

as prescribed by the certificate meant that appellant was only entitled to engage in the transportation of:

> "(1) oilfield equipment, (2) of oilfield machinery, and (3) of oilfield materials; and that this operating authority is limited to such equipment, machinery, and materials, as are commonly limited in their use to the oilfield industry or are clearly identifiable as being intended for use by the oilfield industry."

In reaching this conclusion, the Commission found:

> "We conclude that respondent's certificate is unambiguous, and that the adjective "oil-field" modifies "materials" and "machinery" as well as equipment."

The Court, in its opinion, Appendix A, while finding that there existed a rational basis for the Commission

decision, found the commodity descripion to be "patently ambiguous", saying

> "Since as written the language in question is patently ambiguous and susceptible of varying constructions, this Court should not substitute another construction for that of the Commission."

From that finding, they further concluded:

> "Further there has been no showing by the plaintiff that the original "grandfather" permit at the time of issuance was interpreted by the holder thereof to allow hauling of anything other than oil-field equipment, oil-field machinery and oil-field materials. There was no showing of any hisory of transportation of machinery and materials other than oil-field equipment, oil-field machinery and oil-field materials under the "grandfather" permit. If the history had clearly demonstrated that the "grandfather" permit covered machinery and materials generally, the decision might be different; however no such history appears in the record.
>
> "The primary responsibility for interpreting certificates and determining what items fall within a commodity description contained therein rests with the Commission. The Commission has exercised that responsibility, delineated the scope of Acton's operating authority, found that Acton had been and was willfully transporting commodities not authorized by its certificate, and issued its order to cease and desist."

Both the Commission and the Court indicate by their opinions that they were materially influenced by their consideration of a definition of the word "materials", where in fact that questions is in no way involved. The issue in question is whether the certificate authorizes the transportation of "machinery" and "mater-

ials", or simply "oil-field machinery" and "oil-field materials".

THE QUESTIONS ARE SUBSTANTIAL

In our notice of appeal we stated that two questions would be presented by this appeal.

The first poses a simple question which directly attacks the rationale of the Commission's decision as indicated by its ultimate conclusion that the authority to transport

> "Oil-field equipment, machinery, and materials."

is the equivalent of an authority to transport

> "(1) oilfield equipment, (2) of oilfield machinery, and (3) of oilfield materials; and that this operating authority is limited to such equipment, machinery, and materials, as are commonly limited in their use to the oilfield industry or are clearly identifiable as being intended for use by the oilfield industry."

If such is so, there must be some real basis for such a drastic conclusion. The principal reason advanced is "industry usage", but we insist that the evidence of record does not show this to be a fact. Another basis advanced is the specious argument that by dictionary definition the word "materials" is the equivalent to "general commodities" which is a term used in certificates authorizing the transportation of that class of commodities. As we point out elsewhere, the question of the definition of that word is not at issue in this proceeding.

The certificated commodity description is clear, concise, and unambiguous, and one which has been in ex-

istence for many years without the Commission heretofore determining that it must be revised and rewritten. The term, consisting of one adjective, three nouns, and a conjunction, is a simple expression which the learned experts, whose testimony was in no way contradicted, found easy to define.

The second question is one raised by the conclusion of the Court to the effect that the involved commodity description is "ambiguous and susceptible of varying constructions", the Court saying:

> "Since as written the language in question is patently ambiguous and susceptible of varying constructions, this Court should not substitute another construction for that of the Commission."

This finding of the Court is its only basis for its conclusion that the construction advanced by the Commission should be accepted. But, as heretofore indicated, the Commission reached on this point an exactly opposite conclusion, saying:

> "We conclude that respondent's certificate is unambiguous and that the adjective "oil-field" modifies "materials" and "machinery" as well as equipment."

This question would become important only in view of the principal heretofore announced to the effect that where the commodity description is "patently ambiguous", the Commission would look into the underlying proceedings to ascertain what authority it had *intended* to authorize.

The conclusion of the Court is clearly erroneous where it would require Acton to carry the burden of proving its antecedent right to the certificate as issued.

The Commission cases all hold that the burden of proof in this type of case would be on the moving party, the Bureau of Inquiry. The materiality of this error is clearly apparent in the final conclusion of the Court, where it said:

> "If the history had demonstrated that the "grandfather" permit covered machinery and materials generally, the decision might be different; however, no such history appears in the record."

We state, in all sincerity, that this record provides no factual basis for the interpretive conclusions reached by the Commission, in fact the evidence of record would compel opposite conclusions to be reached.

Of course, no legal authority is cited to support a conclusion that something means something other than what something means! The Commission overlooked its only known authority for such a position when it neglected to cite the case of *Humpty-Dumpty*. In that case, as reported by Lewis Carroll in "Through The Looking Glass", Humpty-Dumpty is said to have said:

> "When I use a word", Humpty-Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

Alice retorted:

> "The question is", said Alice, "whether you can make words mean so many different things."

Then, Humpty-Dumpty, like our Commission, concluded:

> "The question is", said Humpty-Dumpty, "which is to be master—that's all".

Unless the involved decisions are reviewed by this Court, Acton must necessarily terminate its long conducted motor carrier operations inasmuch as more than sixty percent of its revenues are derived from the handling of commodities which have no connection whatever with the oilfield industry. This administrative high-handed handling of a valuable property right must be corrected, or issued certificates of public convenience and necessity will have no value and will simply exist without hope of continuity and subject to the whim of a future Commission.

CONCLUSION

The questions presented by this appeal are substantial and of such public importance as to require plenary consideration with briefs and oral argument, for their resolution.

Respectfully submitted,

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Certificate of Service

I, James W. Wrape, one of the attorneys for appellant, J. B. Acton, Inc., and a member of the bar of the Supreme Court of The United States, hereby certify that on the ... day of January, 1964, I served copies of the foregoing Jurisdictional Statement to the Supreme Court of The United States on the several parties as follows:

1. On the United States by mailing copy, duly addressed and postage prepaid to Honorable Archibald Cox, The Solicitor General, Department of Justice, Washington 25, D.C.; Mr. Lee Loevinger, Assistant Attorney General, Department of Justice, Washington 25, D. C.; Mr. John H. B. Wigger, Attorney, Department of Justice, Washington 25, D. C.; Mr. S. Russell Millin, United States Attorney, 549 United States Court House, Kansas City 6, Missouri.

2. On the Interstate Commerce Commission, by mailing copy duly addressed and postage prepaid, to Mr. Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington 25, D. C.; and to Mr. James Y. Piper, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.

3. Upon the intervenors herein by mailing copy, duly addressed and postage prepaid to Mr. Tom B. Kretsinger, Kretsinger and Kretsinger, Attorneys at Law, 510 Professional Building, Kansas City 6, Missouri.

JAMES W. WRAPE
Attorney for Appellant herein

APPENDIX A

Order

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 13879-4

J. B. Acton, Inc., *Plaintiff*,

v.

United States of America and The Interstate Commerce Commission, *Defendants*,

J. L. Cox & Son, Inc., Parkhill Truck Company, J. O. (Red) Willett Pipe Line Stringing Corporation, Dunn Bros., Inc., Middlewest Freightways, Inc., The Chief Freight Lines Company, *Intervening Defendants*.

FINAL JUDGMENT ADOPTING OPINION CONTAINING FINDINGS OF FACTS AND CONCLUSIONS OF LAW, VACATING AND DISSOLVING TEMPORARY RESTRAINING ORDER, AFFIRMING REPORT AND ORDER OF INTERSTATE COMMERCE COMMISSION AND DENYING APPLICATION OF PLAINTIFF FOR INTERLOCUTORY AND PERMANENT INJUNCTION

This cause having been submitted upon the record made before this Court, including the record and report of the Interstate Commerce Commission, the briefs and arguments of counsel, and the Court being fully advised in the premises, it is, by the Court, hereby

Ordered and Adjudged that the attached opinion of Becker, District Judge, be, and it is hereby, adopted as the opinion of the Court. It is further

ORDERED AND ADJUDGED that the temporary restraining order hereinbefore issued be, and it is hereby, vacated and dissolved. It is further

ORDERED AND ADJUDGED that the Report and Order of the Interstate Commerce Commission under review be, and it is hereby, in all respects affirmed. It is further

ORDERED AND ADJUDGED that plaintiff's applications for interlocutory and permanent injunctions be, and the same are hereby, denied.

ALBERT A. RIDGE
Albert A. Ridge, *Circuit Judge*

FLOYD R. GIBSON
Floyd R. Gibson, *District Judge*

WILLIAM H. BECKER
William H. Becker, *District Judge*

Kansas City, Missouri
September 5, 1963

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

(Captioned omitted)

Before RIDGE, Circuit Judge, and GIBSON and BECKER, District Judges.

Memorandum Opinion

BECKER, District Judge:

This is a proceeding brought by J. B. Acton, Inc. (hereinafter referred to as Acton) under Title 28 U.S.C.A., sections 1336, 2284 and 2321 to 2325, to restrain, annul, enjoin and set aside an order of the Interstate Commerce Commission (hereinafter referred to as the Commission)

dated April 3, 1962, entered in Docket No. MC-C-2985, *J. B. Acton Inc., Investigation and Revocation*, 89 M.C.C. 59.

This case came on for final hearing before a duly designated three-judge District Court. The Court has jurisdiction to decide the case. Title 28 U.S.C.A., sections 1336, 2284 and 2325. The complete record before the Commission was introduced into evidence. The cause was orally argued by counsel, written briefs were filed and the case was submitted.

Acton holds corrected certificate of convenience and necessity MC-80847 (Sub-No. 2), authorizing it to transport over irregular routes "*Oil-field equipment, machinery, and materials*" between points in Kansas, Oklahoma, Texas, New Mexico, Arkansas and Louisiana.

The corrected certificate and the rights thereunder stem from Docket No. MC-4884 assigned to "grandfather" operations under the Motor Carrier Act of 1935 (now Part II of the Interstate Commerce Act) by S. R. Hazelrigg. These rights were subsequently transferred to J. B. Acton individually by Division 4 of the Commission pursuant to proceedings in Docket No. MC-F-4394, January 31, 1956. Docket No. MC-80847 (Sub-No. 2) was assigned to cover the rights acquired by J. B. Acton individually. Pursuant to an order in Docket No. MC-FC-58586, December 27, 1955, the operating rights were transferred to Acton the plaintiff herein.

On April 19, 1960, the Commission, Division 1, on its own motion and pursuant to Section 204(c) and 212(a) of the Interstate Commerce Act (hereinafter referred to as the Act), 49 U.S.C.A., Sections 304(c) and 312(a), instituted an investigation to determine whether Acton ". . . is and has been transporting various commodities not authorized by . . . [its certificate] . . . in violation of Section 206(a) of said Act . . . ," with a view to the entry, if unauthorized operations were found to have oc-

curred and were found to be willful, of an appropriate order suspending for a stated period in whole or in part, the corrected certificate issued to Acton.

A hearing was held before a hearing examiner on March 13, 1961. The parties appeared and introduced evidence. The hearing examiner filed a report finding that Acton was and has been operating in excess of and beyond the terms of its certificate in violation of Section 206(a) of the Act; that the conduct of said unlawful operations appeared to have been, and to be, willful, but yet not such as to warrant or require suspension or revocation of Acton's certificate. The examiner recommended an order requiring Acton to cease and desist from the operations found to be unlawful. Exceptions to the order recommended by the examiner were filed by Acton and by the Bureau of Inquiry and Compliance, Interstate Commerce Commission. The report of the Commission, Division 1, entered April 3, 1962, was as follows:

> "We find that the certificate heretofore granted to respondent in No. MC-80847 (Sub-No. 2), for the transportation of 'oil-field equipment, machinery, and materials,' authorizes the transportation (1) of oil-field equipment, (2) of oil-field machinery, and (3) or oil-field materials; and that this operating authority is limited to such equipment, machinery, and materials, as are either commonly limited in their use to the oil-field industry or are clearly identifiable as being intended for use by the oil-field industry.
>
> "We further find that respondent is and has been engaged in the transportation of commodities other than those specified in the preceding paragraph; that such operation is and has been in violation of section 206(a) of the Interstate Commerce Act, is unlawful, and should be discontinued; that these unlawful operations were conducted wilfully; and that an order should be entered requiring respondent to cease and desist forthwith, and thereafter to refrain and abstain from such operations unless and until appropriate authority therefor has been obtained."

An order in accordance with these findings was entered by the Commission.

In its complaint Acton alleges that the order of the Commission is unreasonable, arbitrary, capricious, unlawful and an abuse of discretion as well as in excess of statutory authority. In substance Acton's basic claims are the following: the order of the Commission is predicated upon the Commission's substitution without justification of its ideas of grammatical construction for the well established and recognized rules of grammatical construction (otherwise stated, the substitution by the Commission of its conception of the meaning of simple, precise and intelligible language for the commonly accepted and recognized use and meaning thereof); the Commission's order does not include an adequate statement of findings; the Commission's findings are not supported by any evidence whatsoever.

The function of a three-judge district court in a suit to enjoin the enforcement of a Commission order is limited to ascertaining whether or not there is warrant in the law and the facts for what the Commission has done. Unless specific and prejudicial departure from the requirements of the law or abuse of discretion is shown, the reviewing court is without authority to intervene and substitute its judgment upon the issues committed to the determination of the Commission. *United States* v. *Pierce Auto Freight Lines*, 237 U.S. 515, l.c. 535-36, 66 S.Ct. 687, 90 L.Ed. 821; *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, l.c. 138-40, 59 S.Ct. 754, 83 L.Ed. 1147; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, l.c. 286-87, 54 S.Ct. 692, 78 L.Ed. 1260; *I.C.C.* v. *Union Pac. R.R.*, 222 U.S. 541, l.c. 547-48, 32 S.Ct. 108, 56 L.Ed. 308. As stated in Mississippi Valley Barge Line, supra, 292 U.S. at 286-87, "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body."

The major claim of error by Acton is that the Commission's finding is predicated upon a patently perverse misconstruction of the "simple, precise and intelligible" meaning of the language "*oil-field equipment, machinery, and materials.*"

To support its claim in this respect plaintiff Acton relies upon the testimony of two professors engaged in teaching English that in their opinion the adjective "Oil-field" in the language in question modifies, and therefore limits, only the noun "equipment" and in no wise modifies or limits the nouns "machinery" and "materials." The findings and order under review were contrary to that testimony. However these opinions were not binding on the Commission. *Ace Lines, Inc.* v. *United States* (S.D. Iowa) 197 F.Supp. 591, l.c. 596; see also *Loving* v. *United States* (W.D. Okla.) 32 F.Supp. 464, l.c. 467, *aff'd*, 310 U.S. 609, 60 S.Ct. 898, 84 L.Ed. 1387, and cases therein cited. Therefore, no relief can be granted Acton because of failure to follow the opinions of the two professors.

Plaintiff Acton further seeks to attach some critical significance to the lack of continuity in the underlining of that language of the certificate now in question. The broken underlining in question is contrasted by Acton with unbroken underlining as in the following hypothetical language: "*Oil-field equipment, machinery and supplies.*" Plaintiff concedes that in the foregoing hypothetical language "oil-field" modifies each of the following nouns.

The contention is that the broken underlining in the case at bar is not continuous and therefore "oil-field" modifies only the first noun, "equipment." Plaintiff cites *Pierce Auto Freight Lines, Inc.* v. *Converse*, 54 M.C.C. 447, l.c. 451, in support of this contention. The Court does not regard the lack of continuity in the underlining as demonstrative of the correctness of plaintiff's claim. Neither of plaintiff's expert witnesses regarded the lack of continuity as significant. (Diebolt, Tr. 115; Hilty, Tr.

76). No general inflexible rule of construction exists which would make the nature of the underlining determinative of this case, though of course it should be considered along with all other indicia of construction as it has been in this case.

The Commission has an expertise of its own in interpreting the language of certificates of convenience and necessity to determine the scope of the transportation operations authorized thereby. The "cumulative experience" of the Commission

> "begets understanding and insight by which judgments not objectively demonstrable are validated or qualified or invalidated. The constant process of trial and error, on a wider and fuller scale than a single adversary litigation permits, differentiates perhaps more than anything else the administrative from the judicial process." *National Labor Relations Board* v. *Seven-Up Co.*, 344 U.S. 344, l.c. 349, 73 S.Ct. 287, 97 L.Ed. 377.

Since as written the language in question is patently ambiguous and susceptible of varying constructions, this Court should not substitute another construction for that of the Commission.

In the words of Mr. Justice Holmes in *Towne* v. *Eisner*, 245 U.S. 418, l.c. 425, 38 S.Ct. 158, 62 L.Ed. 372,

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

Also applicable is the thought embodied in the language of Mr. Justice Frankfurter in *United States* v. *Rabinowitz*, 339 U.S. 56, l.c. 69-70, 70 S.Ct. 430, 94 L.Ed. 653 (dissenting opinion):

> "These words are not just a literary composition. They are not to be read as they might be read by a man who knows English but has no knowledge of the

> history that gave rise to the words. * * * Words must be read with the gloss of the experience of those who framed them."

In the light of these principles, it cannot be said that the interpretation of the Commission, arrived at through the application of its "cumulative expertise," is not a permissible one.

The lack of logic inherent in the construction urged by Acton was aptly demonstrated by the following excerpt from page 6 of the Commission's report:

> "Thus, 'materials,' when translated into transportation parlance, is roughly tantamount to 'general commodities,' which description approximates the scope of Acton's admitted operations under its 'materials' authority. Accepting respondent's construction, one reaches a patently absurd result, i.e., that in the certificate in question the Commission authorized the transportation of:
>
> (1) materials, i.e., general commodities, apparently without the usual exceptions; plus
>
> (2) machinery of all kinds (a superfluous grant in view of (1) above); together with
>
> (3) oil-field equipment (likewise superfluous when combined with (1) and (2) above) . . ."

In accord with the conclusion in this case is *Pierce Auto Freight Lines, Inc.* v. *Converse*, 54 M.C.C. 447, *aff'd, Converse* v. *United States* (N.D. Cal.) 109 F.Supp. 807, wherein a similar question was decided contrary to the testimony of experts on language. As was noted in *Converse* v. *United States, supra*, if the plaintiff should prevail, then under the general class of machinery and materials (which in the unlimited sense covers nearly everything) plaintiff could usurp the right to transport practically all material things of every nature in the territory covered by its certificate to the impairment of every permit heretofore granted in said territory.

Further there has been no showing by the plaintiff that the original "grandfather" permit at the time of issuance was interpreted by the holder thereof to allow hauling of anything other than oil-field equipment, oil-field machinery and oil-field materials. There was no showing of any history of transportation of machinery and materials other than oil-field equipment, oil-field machinery and oil-field materials under the "grandfather" permit. If the history had clearly demonstrated that the "grandfather" permit covered machinery and materials generally, the decision might be different; however no such history appears in the record.

The primary responsibility for interpreting certificates and determining what items fall within a commodity description contained therein rests with the Commission. The Commission has exercised that responsibility, delineated the scope of Acton's operating authority, found that Acton had been and was willfully transporting commodities not authorized by its certificate, and issued its order to cease and desist.

We conclude that there was a rational factual and legal basis for the Commission's order; that the order is not clearly erroneous, not capricious, arbitrary or the result of any abuse of discretion on the part of the Commission; that there is a substantial basis for the order.

This memorandum opinion shall constitute the Court's findings of facts and conclusions of law.

APPENDIX B

Order

INTERSTATE COMMERCE COMMISSION

No. MC-C-2985

J. B. ACTON, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATE

Decided April 3, 1962

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1. Respondent found engaged in certain transportation beyond the scope of operations authorized in its certificate, No. MC-80847 (Sub-No. 2).

2. Cease and desist order entered.

Eilis V. Gregory, Harry F. Horak, and Robert S. Turkington for the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

Thomas E. James, James F. Miller, Walter V. Huston, Tom B. Kretsinger, Ted V. McGuire, Hugh T. Matthews, and Donald E. Raymond for interveners in support of the proceeding.

James W. Wrape and Bill R. Davis for respondent.

REPORT OF THE COMMISSION

Division 1, Commissioners Walrath, Webb, and Tucker

WEBB, *Commissioner:*

Exceptions to the order recommended by the examiner were filed by respondent and by the Bureau of Inquiry and Compliance, Interstate Commerce Commission. The Bu-

reau and a number of interveners[1] replied to respondent's exceptions.

By order entered April 19, 1960, the Commission, division 1, on its own motion, instituted an investigation under sections 204(c) and 212(a) of the Interstate Commerce Act, to determine whether J. B. Acton, Inc., respondent, has been in violation of section 206(a) of the act by having engaged as a common carrier by motor vehicle, in interstate or foreign commerce, in the transportation for compensation of property not authorized by the certificate issued to it in No. MC-80847 (Sub-No. 2). In the event that willful violations are found, this order provides for the suspension of the aforementioned certificate for a stated period. Whether or not any such violations have been willful, the order further provides for the issuance of an order requiring respondent's compliance with the act, and upon respondent's failure to comply, authorizes suspension or revocation of the aforesaid certificate. Repliants appeared in support of the proceeding, as did a number of other carriers.[2]

The examiner recommended the entry of an order requiring respondent to cease and desist from operations found not to be authorized by its Sub-No. 2 certificate, the carrier's authority being limited to the transportation of commodities peculiar to or intended for use by the oilfield industry.

---

[1] J. L. Cox & Sons, Inc., Parkhill Truck Company; J. O. (Red) Willett Pipe Line Stringing Corporation; Dunn Bros., Inc.; The Chief Freight Lines Company; Middlewest Freightways, Inc.; Knaus Truck Lines, Inc.; The Cassill Transfer and Storage Co.; Stasis Motor Freight, Inc.; Ship By Truck Co.; North American Van Lines, Inc.; East Texas Motor Freight Lines, Inc.; Gillette Motor Transport, Inc.; Voss Truck Lines, Inc.

[2] These were J. H. Rose Truck Line, Inc., Bell Transportation Company, Roberston Tank Lines, Inc., National Tank Truck Carriers, Inc., Mo-Ark Transporation Company, and Southern Plaza Express, Inc., motor common carriers.

On exceptions, the Bureau contends that the examiner erred (1) in failing to make specific findings to the effect that certain named commodities actually were transported by respondents, were not oilfield commodities, and thus were not authorized by respondent's Sub-No. 2 certificate which covers only "oil-field equipment, machinery, and materials"; and (2) in failing to recommend suspension of the aforesaid certificate for a stated period.

In its exceptions, respondent argues (1) that because the wording employed in its certificate is not patently ambiguous, the Commission may not look to the proceeding which gave rise to the questioned instrument; (2) that since the certificate contains no terms having a special meaning within the oilfield industry, the Commission, in construing the instrument, is bound by the plain meaning of the words contained therein, and may not now impose another interpretation based upon its unexpressed intentions at the time the document was drafted; (3) that the meaning of the certificate has been established through the uncontradicted testimony of respondent's two expert witnesses, whose interpretation offers the only grammatically correct reading of the instrument; (4) that the certificate authorizes the transportation of "materials and equipment" generally; (5) that the manner in which the commodity description in the certificate is underlined, and the history of the changes made in this underlining, reinforce respondent's position respecting the meaning of the terms themselves; (6) that the appendix to respondent's exceptions demonstrates the untenability of the position that the Commission always drafts certificates without repeating a limiting adjective whenever it seeks to limit the authority granted; (7) that respondent, acting in good faith, and relying upon the only grammatically correct interpretation of its certificate, has always held out openly to the public that it has authority to transport materials and machinery generally, and has published tariffs to that effect, without any objection by the Commission, and that the Commission may not now con-

demn such operations or characterize them as willful violations; and (8) that even if willful violations should be found, there is no legal foundation for the suspension sought by the Bureau, because no order has ever been entered directing cessation of the practices in question. Respondent urges that the proceeding be dismissed for the foregoing reasons and also because the Commission, acting in the dual capacity of prosecutor and judge, is likely to be biased. Acton suggests that a court action would afford a more impartial adjudication. Elsewhere in the same pleading Acton admits that the instant proceeding is lawful and merely requests an impartial decision. In view of the fact that this type of proceeding is authorized by sections 204(c) and 212(a) of the act, and its legality is conceded by respondent, the exception taken on this point is deemed to be without merit and will not be discussed further.

Repliants all contend, essentially, that respondent has been willfully operating beyond the scope of its authority, and that such practices should be stopped.

The evidence adduced, the examiner's recommendations, and the pleadings have been considered. The examiner's statement of facts is correct in all material respects, and, as herein supplemented, we adopt it as our own.

Respondent Acton holds a certificate of public convenience and necessity, issued in No. MC-80847 (Sub-No. 2), which, as pertinent, authorizes the transportation, over irregular routes, of—

Oil-field equipment, machinery, and materials,

> Between points in Kansas, Oklahoma, Texas, New Mexico, Arkansas, and Louisiana.

Under the construction advanced by Acton, the word "oil-field" modifies only "equipment," and not "machinery" or "materials." Relying upon this interpretation, it admittedly has for a number of years transported

a substantial quantity of varied traffic wholly unrelated to the oilfield industry.

In support of its position Acton introduced the testimony of two associate professors of English both of whom are learned in the field of grammar and composition. Although not familiar with the transportation industry, they based their interpretations of the commodity description upon the rule of grammatical construction which holds that an adjective modifying the first noun of a series does not modify the other nouns of the series. However, they conceded, in effect, that such a rule must give way where it is clear from the context of the writing that a different meaning was intended; and that in order to derive a meaning which is consistent with common sense, the reader's knowledge of the subject matter must be taken into account and weight necessarily accorded to such factors as trade usage and common understanding. Having no knowledge of the subject matter, however, they found no reason to depart from the aforementioned general rule. An appendix to respondent's exceptions lists many examples of certificates, issued by the Commission, in each of which a restrictive modifier was repeated throughout the commodity description.

The breadth of the asserted commodity description "materials" is suggested by the dictionary. The Merriam-Webster New Collegiate Dictionary, 1959 Edition, defines material(s) as:

1. The substance or substances, or the parts, goods, stock, or the like, of which anything is composed or may be made: as, raw materials * * * .

4. pl. The implements necessary to the doing of anything: as, writing materials * * * .

Thus, "materials," when translated into transportation parlance, is roughly tantamount to "general commodities," which description approximates the scope of Acton's ad-

mitted operations under its "materials" authority. Accepting respondent's construction, one reaches a patently absurd result, i.e., that in the certificate in question the Commission authorized the transportation of —

(1) materials, i.e., general commodities, apparently without the usual exceptions; plus

(2) machinery of all kinds (a superfluous grant in view of (1) above); together with

(3) oil-field equipment (likewise superfluous when combined with (1) and (2) above);

and that for some reasons which defies speculation, the Commission chose to hide the extraordinary grant of unrestricted general commodity authority in the phrase "oil-field equipment, machinery, and materials," a phrase strongly connoting a limited scope of operations. To the best of our knowledge, whenever we have authorized "general commodities" we have called it by that name. Conversely, a commodity description, "materials," without limitation to a particular class of materials, would be virtually unprecedented. We invariably include the description "materials" only in connection with a particular industry. When seeking to restrict "materials" authority, or any other authority, to the appropriate industry, we use a limiting adjective. Such a modifier is repeated throughout a series of nouns (as in the voluminous list of examples supplied by respondent) whenever it is felt at the time of drafting that such a technique is necessary or desirable in order to convey the thought intended, without ambiguity. However, where, as here, only one interpretation is consistent with common knowledge and common sense, we do not always offend the intelligence and patience of the reader by repeating the obviously intended limitation throughout. Of necessity, the language used in commodity descriptions is frequently cumbersome, and we naturally attempt to eliminate unnecessary verbiage in some of the more obvious situations. When this is done,

unfortunately, rare occasions do arise when ingenious carriers seize upon an inappropriate rule of grammatical construction, and thus armed, conduct flagrantly unlawful operations, relying upon an interpretation which defies the clear intent of the Commission and the common understanding of the industry. Such was the case in *Pierce Auto Freight Lines, Inc.*, v. *Converse*, 54 M.C.C. 447; in *Dart Transit Co.—Modification of Permit*, 49 M.C.C. 607, affirmed *sub nom., Dart* v. *United States*, 110 F. Supp. 876 (D. Minn. 1953), affirmed *per curiam*, 345 U.S. 980; and in *Builders Exp. Inc., Interpretation of Certificate*, 51 M.C.C. 103. In these cited cases, as in every other in which a certificate holder adopted its own fanciful interpretation in preference to the meaning readily apparent to others in the regulated motor carrier industry, the Commission repudiated the tortured constructions even (as in *Pierce Auto Freight Lines, Inc.*, v. *Converse, supra*) where language experts supported the offending carrier. The result can be no different here, even though respondent has found two learned college professors who agree with its position. While experts in their field, these witnesses were unfamiliar with regulated motor carriage and thus unaware of the absurdity, in transportation terms, of attempting to interpret the respondent's certificate solely from an academician's point of view.

In *Pierce Auto Freight Lines, Inc.*, v. *Converse, supra*, one of the respondent's witnesses suggested that the use of underlining indicated an intention to consider the words as a single group. The commodity description in that case—"*mining and construction materials, equipment and supplies*"— differs from that involved here in that the underlining (italics here) is complete. Respondent contends that since its certificate reads "*Oil-field equipment, machinery*, and *materials*," and not "*Oil-field equipment, machinery, and materials*," the Commission manifested a lack of intent to consider the words as a single group. We are satisfied that the underlining (italics here) has no interpretative significance here, and we think respondent's

citation of *Pierce Auto Freight Lines, Inc., v. Converse* in this connection misses the point of that case. One of the underlined groups of commodities considered in "*mining and construction materials, equipment and supplies,*" was construed, without regard to underscoring, and found to mean (1) mining and construction materials, (2) mining and construction equipment, and (3) mining and construction supplies. We conclude that respondent's certificate is unambiguous, and that the adjective "oil-field" modifies "materials" and "machinery" as well as "equipment."

There being no ambiguity in the considered wording, it is unnecessary to look to the records in the underlying proceedings to ascertain what authority the Commission intended to grant, but it is noteworthy that the respondent does not contend that the Commission's records would support a conclusion contrary to that reached herein.

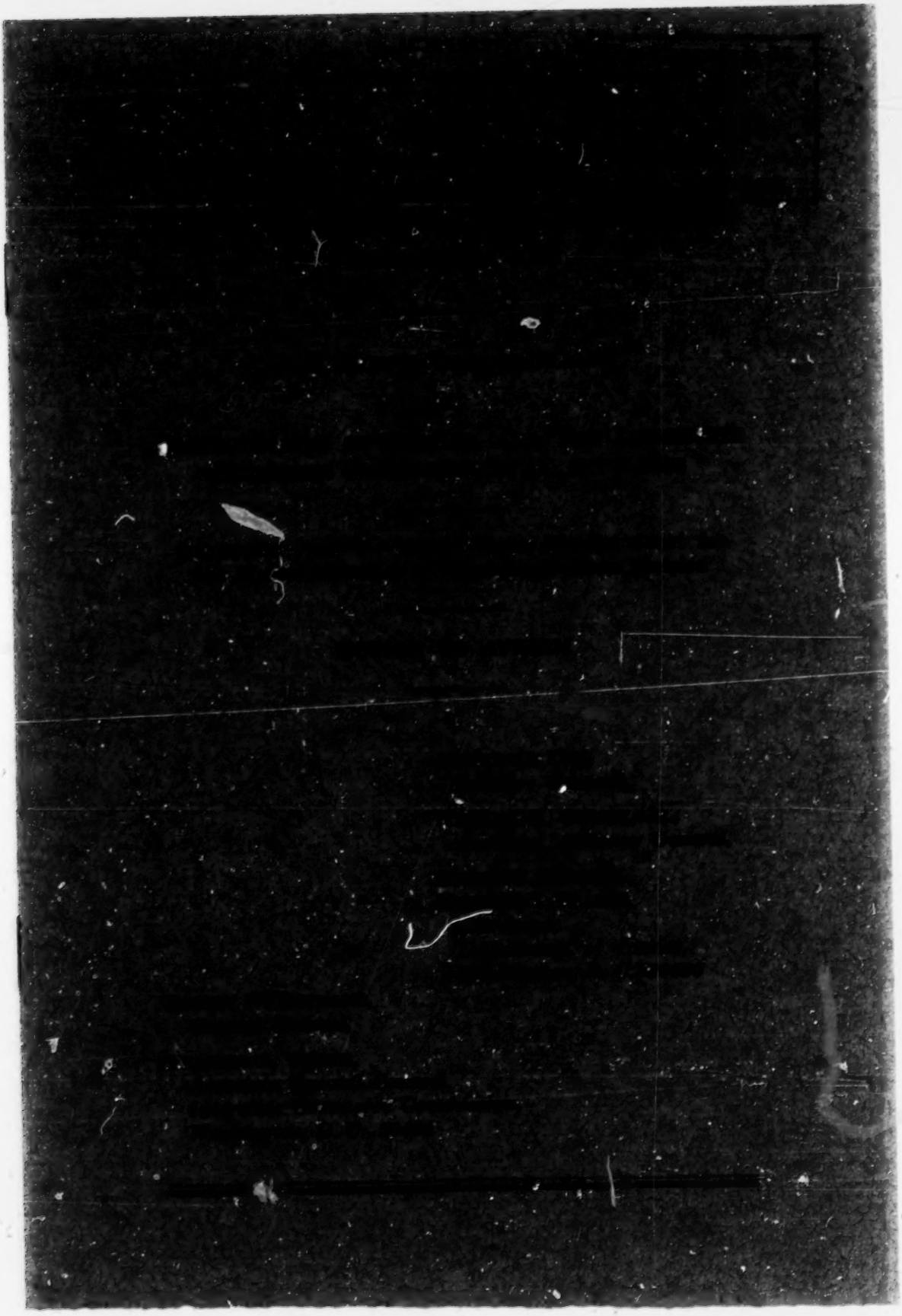
As seen, respondent's certificate limits the carrier's operations to the transportation of oilfield equipment, oilfield machinery, and oilfield materials. Thus, Acton's commodity authority is confined to those items peculiar to or intended for use by the oilfield industry. In contrast to this comparatively narrow scope of operations actually authorized, Acton has admittedly engaged for a number of years as a carrier of what amounts to general commodities, its traffic having been restricted only by the limits of respondent's ability to attract business. There has been no justification for such conduct. The self-serving interpretation devised by respondent is too tortured for us to believe that these flagrantly unlawful operations were not willfully conducted. Furthermore, these violations were not made less serious by the fact that unauthorized traffic was solicited continuously, openly, and vigorously over a long period of time. It is well established that our failure to reject a tariff listing rates for unauthorized commodities operates neither to convey new authority nor to condone the unlawful conduct. *See Simpson—Investigation and Revocation*, 73 M.C.C. 75.

The effect of these willful violations has been to deprive duly authorized carriers of revenues to which they, and not respondent, were entitled. Such practices, of course, must be discontinued, and an order to this effect will be entered herein. To suspend respondent's certificate at this point would impost a hardship on those shippers which respondent is authorized to serve. However, continuance of the operations herein found unauthorized will be met with prompt action to suspend or revoke respondent's certificate.

We find that the certificate heretofore granted to respondent in No. MC-80847 (Sub-No. 2), for the transportation of "oilfield equipment, machinery, and materials," authorizes the transportation (1) of oilfield equipment, (2) of oilfield machinery, and (3) of oilfield materials; and that this operating authority is limited to such equipment, machinery, and materials, as are either commonly limited in their use to the oilfield industry or are clearly identifiable as being intended for use by the oilfield industry.

We further find that respondent is and has been engaged in the transportation of commodities other than those specified in the preceding paragraph; that such operation is and has been in violation of section 206(a) of the Interstate Commerce Act, is unlawful, and should be discontinued; that these unlawful operations were conducted willfully; and that an order should be entered requiring respondent to cease and desist forthwith, and thereafter to refrain and abstain from such operations unless and until appropriate authority therefor has been obtained.

An appropriate order will be entered.



In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 726

J. B. ACTON, INC., APPELLANT

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

On Appeal from the United States District Court for the Western District of Missouri, Western Division

---

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court convened pursuant to 28 U.S.C. 2282 and 2325. The judgment affirmed a report and order of the Interstate Commerce Commis-

sion directing the appellant to cease and desist from conducting certain motor carrier operations found to be unauthorized by its common carrier certificate, and denied appellant's applications for interlocutory and permanent injunctions. (J. St. 1a-2a).

Appellant holds a certificate of public convenience and necessity authorizing it to transport "*Oil-field equipment, machinery,* and *materials*" between points in Kansas and five other States (J. St. 3a). In 1960, the Commission instituted an investigation under Sections 204(c) and 212(a) of the Interstate Commerce Act, 49 U.S.C. 304(c) and 312(a), to determine whether appellant was transporting certain commodities not authorized by its certificate, in violation of Section 206(a) of the Act, 49 U.S.C. 306(a). After full administrative proceedings (described in the district court opinion, J. St. 3a-5a), the Commission held that the authority in appellant's certificate to transport "*oil-field equipment, machinery,* and *materials*" does not cover machinery and materials generally (which appellant was transporting).

The Commission interpreted the certificate to authorize transportation (1) of oilfield equipment, (2) of oilfield machinery, and (3) of oilfield materials, and ruled that such authority is limited to such equipment, machinery, and materials, as are either commonly limited in their use to the oilfield industry or are clearly identifiable as being intended for use by the oilfield industry (J. St. 18a). It rejected appellant's contention that the word "oil-field" contained in its certificate modifies only "equipment," and not "machinery" or "mate-

rials". It pointed out (J. St. 14a-15a) that the term "materials" is roughly equivalent to "general commodities"; that, whenever the Commission has authorized the transportation of "general commodities", it has used the latter phrase; and that as a commodity description "materials" would be virtually unprecedented. The Commission concluded that appellant's certificate is unambiguous and that, therefore, it was unnecessary to look to the records in the underlying "grandfather" proceedings to ascertain what the Commission intended to grant. It noted also that the appellant did not contend that the Commission's records would support a conclusion contrary to that reached in the proceeding before it (J. St. 17a).

The district court unanimously held that the Commission's interpretation was a permissible one (J. St. 8a). The court observed that if the appellant should prevail, "then under the general class of machinery and materials (which in the unlimited sense covers nearly everything) plaintiff could usurp the right to transport practically all material things of every nature in the territory covered by its certificate to the impairment of every permit heretofore granted in said territory" (J. St. 8a). It concluded that "there was a rational factual and legal basis for the Commission's order; that the order is not clearly erroneous, nor capricious, arbitrary or the result of any abuse of discretion on the part of the Commission; that there is a substantial basis for the order" (J. St. 9a).

ARGUMENT

This appeal presents no substantial question warranting plenary review by this Court. It involves only the meaning of a commodity description in a certificate of public convenience and necessity, and the district court correctly upheld the Commission's interpretation of its own certificate.

1. The interpretation of a certificate issued by the Commission is primarily a question for that agency (see *Service Storage & Transfer Co.* v. *Virginia*, 359 U.S. 171), and its interpretation "is controlling on the courts unless clearly erroneous," *Andrew G. Nelson Inc.* v. *United States*, 355 U.S. 554, 558. *Simpson* v. *United States*, 200 F. Supp. 372 (S.D. Iowa), affirmed, 369 U.S. 526. In the present case, the district court correctly upheld the Commission's interpretation on the ground that it had a "rational factual and legal basis", was not "clearly erroneous", and was not "capricious, arbitrary or the result of any abuse of discretion on the part of the Commission" (J. St. 9a).

2. Appellant's principal contention is that the certificated commodity description is clear, concise, and unambiguous and that the meaning of it was established through the uncontradicted testimony of appellant's two expert witnesses, two associate professors of English (J. St. 8-9). These witnesses based their interpretations of the commodity description upon the rule of grammatical construction which holds that an adjective modifying the first noun of a series does not modify the other nouns of the series.

These witnesses were not familiar with the transportation industry and accordingly they did not take into account such factors as "trade usage" and "common understanding" in the industry (J. St. 14a). The Commission observed that these witnesses, while experts in their field, "were unfamiliar with regulated motor carriage and thus unaware of the absurdity, in transportation terms, of attempting to interpret the respondent's certificate solely from an academician's point of view" (J. St. 16a). The district court correctly held that these opinions "were not binding on the Commission." *Simpson* v. *United States*, *supra*; *Ace Lines, Inc.* v. *United States*, 197 F. Supp. 591, 596 (S.D. Iowa).

3. Appellant also argues that if the terminology of the certificate is ambiguous, it should not be required to justify the broad construction for which it contends by proving the scope of its grandfather operations. If, however, the authority granted does not accurately reflect the carrier's grandfather operations, it is incumbent upon the carrier to re-open the grandfather proceedings; it may in no event collaterally attack the scope of the grandfather certificate in an investigative proceeding of this kind. *Nelson, Inc.* v. *United States*, 355 U.S. 554, 561-562.

CONCLUSION

The decision below is clearly correct and this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted.

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FEBRUARY, 1964.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 719428 849

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JOHN F. DAVIS, CLERK

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On Appeal from the United States District Court for the Western District of Missouri, Western Division.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

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RESTATEMENT OF QUESTIONS PRESENTED.

I.

ARE THESE THE SAME?

(Oil field equipment,)
(machinery,)
(and supplies)

Versus

(1) oil-field equipment, (2) oil-field machinery, and (3) oil-field materials, limited to such equipment, machinery and materials as are commonly limited in their use to the oil-field industry or are clearly identifiable as being intended for use by the oil-field industry

II.

May an administrative agency finding of "UNAMBIGUOUS" be affirmed by a judicial finding of "PATENTLY AMBIGUOUS"?

INDEX.

Page

Restatement of Questions Presented ..... Prefaced

The Facts of the Case 1

Discussion of Questions Presented 5

The Dictionary Approach 5

The Commission Approach 6

The Historical Approach 7

Similar Certificates 10

Argument 11

Conclusion 26

Certificate of Service 27

CITATIONS.

Cases:

American Trucking Association v. United States, 101 Fed. Supp. 710, aff'd 344 U. S. 298 22

Builders Express, Inc.—Interpretation of Certificate, 51 M. C. C. 103 18

Burlington Truck Lines v. United States, 371 U. S. 156 25

Coastal Tank Lines, Inc. v. Charlton Bros., 48 M. C. C. 289 ..... 14, 20

Denver and Rio Grande West Railroad Company v. Union Pacific Railroad Company, 351 U. S. 343 26

Interstate Commerce Commission v. J-T Transport Company, 368 U. S. 81 22

Mercer Extension—Oil Field Commodities, 74 M. C. C. 459 4

Pierce Auto Freight Lines, Inc. v. Converse, 54 M. C. C. 447 15
Schaffer Transportation Company v. U. S., 355 U. S. 83 ..... 22, 23, 24
Securities and Exchange Commission v. Chenery Corporation, 332 U. S. 194 25
Sims M. Transport Lines, Inc.—Revocation of Certification, 66 M. C. C. 533 ..... 10, 13
Social Security Board v. Nierotko, 327 U. S. 358 22
United States v. Carolina Carriers Corporation, 315 U. S. 475 22
United States v. Drum, 368 U. S. 370 22
Watson Brothers Transportation Company v. United States and Interstate Commerce Commission, 135 Fed. Supp. 905, aff'd 350 U. S. 927 21

Statutes and Regulations:

Interstate Commerce Act, 49 U. S. C. 1, et seq.:
Section 49 8
Section 306 24
Section 312 9
Section 317 8
Administrative Procedures Act, 5 U. S. C. 1000, et seq.:
Section 1009 ..... 19, 22
Code of Federal Regulations, Part 187, Section 187.4a 2, 8

Miscellaneous:

Webster's New Collegiate Dictionary 6

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On Appeal from the United States District Court for the Western District of Missouri, Western Division.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

THE FACTS OF THE CASE.

Appellant, J. B. Acton, Inc., is a certificated common carrier by motor vehicle which has long been engaged in the transportation of commodities which it was authorized to carry pursuant to rights granted its predecessor in a "grandfather clause" proceeding by the Interstate Commerce Commission decided in 1941.

Since the issuance of the original Certificate, an approved line of succession of ownership of these operating rights evolved so that since 1950 they have been exercised under the name of J. B. Acton, individually, or in the present name of J. B. Acton, Inc.[1]

[1] January 18, 1941, Docket No. MC-4884, S. R. Hazelrig; April 24, 1950, Docket No. MC-80847, Sub-No. 2 to J. B. Acton, individually; March 9, 1956, Docket No. MC-FC-58586 to J. B. Acton, Inc.

From the time of the acquisition of these rights by J. B. Acton, on April 24, 1950, the Appellant and its predecessors have held themselves out as being authorized to, and have transported, a variety of *machinery* and *materials* which were in nowise identifiable as related to the oil field industry (Exhibits 3 and 12). For the purpose of complying with Interstate Commerce Commission rules in connection with this transportation, there were filed with the Commission tariffs regulating the rates to be charged for transporting these various materials and machinery.

Since that time in 1950, Appellant and predecessors have either filed, or participated in the filing of, such tariffs with the Commission. Each of such tariffs was accepted, was used as the governing rate by Appellant; and the service thereby reflected was conducted continuously from 1950 through 1960 when the instant proceedings were originated.[2]

At no time until 1960, although the Commission had the power and authority to reject tariffs providing for transportation which a carrier was not authorized to perform (Code of Federal Regulations, Part 187, Section 187.44a), did the Commission challenge the asserted right of Appellant, or its predecessors, to transport the materials and machinery which were being transported as reflected by the tariffs constantly on file.

In a period of expanding economy with an accompanying increase in the use of motor carrier service, and an enlarged public demand for such service, Appellant developed a transportation service and system based on its cer-

[2] These tariffs are: Exhibits 13 and 14 are individual tariffs filed by J. B. Acton, effective May 16, 1950 and December 31, 1952 under which J. B. Acton as an individual performed transportation; Exhibit 15, corporate tariff of J. B. Acton, Inc., effective May 24, 1956; Exhibit 16, an agency tariff, effective October 28, 1957; and an additional tariff issued by J. B. Acton, Inc., MC-I. C. C. No. 3, effective June 1, 1959.

tificated rights as then exercised. In reliance upon these rights, its terminal facilities were enlarged with new terminals located in Tulsa, Houston, and Kansas City installed, its fleet was enlarged at an investment of in excess of $125,000.00 which provided employment for 55 persons.

From this, and previous investments, coupled with a safe and efficient operation, Appellant received an annual revenue in excess of $600,000.00. Of this amount, more than 60% was from the transportation of machinery and materials *which are not related* in any way to oil field operations, but are machinery and materials within the ordinary meaning of Appellant's Certificates.[3]

On April 13, 1960, the Commission entered an order directing an investigation into the operations of Appellant as a result of a complaint having been made by Associated Motor Carriers of Oklahoma, an association comprised primarily of competitors of Appellant. This hear-

---

[3] January 18, 1941, 23 years ago, was the birthdate of the controversy now before this Court, for it was on that date, pursuant to a "grandfather" application that the initial Certificate covering the operating rights in question was issued by the Commission to S. R. Hazelrig in MC-4884.

It was then issued in its present form, and the commodity description then read as it now does: "oil field equipment, machinery and materials."

So it has existed from that date until today, except for a very brief period of time in 1956, when on March 9, an unauthorized change was made by the Commission whereby it was made to read: "oil field equipment, machinery, and materials."

Upon objection to that form of the Certificate, bearing date of March 9, 1956, it was corrected by the Commission, *nunc pro tunc* to March 9, 1956, to read as it did before and now reads: "oil field equipment, machinery, and materials."

With that monetary exception, not a comma has been changed, not a letter has been changed, not a word has been changed, and not a portion of the underlining has been changed, although the owner of the Certificate has been changed.

J. B. Acton, individually, acquired the certificated rights on April 24, 1950 in MC-80847, Sub-No. 2, which was thereafter transferred in 1955 to J. B. Acton, Inc., in MC-FC-58586, the stock ownership of which was subsequently transferred in 1958 to the present owners and management of J. B. Acton, Inc.

ing was held beginning March 13, 1961, in Kansas City, Missouri.

On September 8, 1961, a recommended report and order of the examiner was served in which the commodity description of Appellant was determined to be "*ambiguous.*"

All parties filed exceptions to this proposed report, and on April 10, 1962, Division 1 of the Commission served its report and order whereby the examiner's *findings of fact*, much as outlined above and to which there was no dispute, were approved. However, Division 1 found the wording of Appellant's Certificate to be "*unambiguous.*" Nevertheless, both the examiner and Division 1 found in substance that Appellant's Certificate authorized the transportation of only three things: (1) oil field equipment, (2) oil field machinery, and (3) oil field materials. The report and order of Division 1 would further restrict Appellant's operations by adding language almost identical to the so-called "Mercer" description restricting Appellant simply and solely to the role of an "oil field hauler."

In order to reach this bizarre result, the Division had to reach into thin air, grasp from nowhere the "*Mercer*" description—something not even formulated until five years after the origin date of Appellant's Certificate,[4] an edification from "speaking in tongues."

The present suit was instituted by Appellant in the District Court for the Western District of Missouri where the Court found the wording of Appellant's Certificate to be "*patently ambiguous*" and reinstated as effective the restrictive interpretation of the order issued by Division 1 of the Commission.[5]

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[4] *Mercer Extension—Oil Field Commodities*, 74 M. C. C. 459.

[5] Both the order of Division 1 and the opinion of the District Court are fully reproduced as appendices to the Jurisdictional Statement herein filed.

DISCUSSION OF QUESTION PRESENTED.

Did the Interstate Commerce Commission err in concluding that a Certificate of Public Convenience and Necessity issued to Appellant and providing for its transportation of:

Oil field equipment, machinery, and materials.

prohibited the handling of "machinery" and "materials" other than "oil field machinery" and "oil field materials"?

This question resolves itself basically into a correct grammatical construction of the phrase, oil field equipment, machinery, and materials.

The Dictionary Approach.

How may such a question be approached? It appears that one acceptable method would be first to analyze the phrase, determine what its component parts are, and then determine, according to accepted grammatical practices, the effect that one part of the phrase has upon the others. In so doing, we first encounter two words, "*oil field*," unquestionably used in this context, coupled together as an adjective which by definition is "*a word used to denote a quality, to define a range of application, or to specify a thing as distinct from something else.*" Next, we encounter "*equipment*," a noun used as such, which by definition is the name "*of a subject of discourse.*" This portion of the phrase is connected by solid underlining.

There follows a comma, which by definition is "*a point used in writing and printing to indicate separation of words, phrases, or clauses from others not closely connected with the structure of the sentence.*"

The remainder of the phrase consists of two more nouns, "*machinery*" and "*materials*" separated in turn by a comma and by a conjunction "*and.*" By definition, a con-

junction is "*a connective having the special function of joining together sentences, clauses, phrases, or words.*" We note also that each of these latter nouns is separately underlined, but that the conjunction is not underlined.

What then is the result of this dissective analysis of the phrase? We find a portion "*oil field equipment*" standing completely alone, together sharing the same underlining, indicative of the intent that they be inseparably joined so that "*oil field*" used as an adjective denotes a quality, or type, of "*equipment*". Completely apart, we find "*machinery*" divided from the preceding portion by a comma, a device used to indicate separation from other words not closely connected, and this we find to be individually underlined, further indicative of the expressed intention to part, separate, and divide it from the preceding portion. We note also that "*materials*" has received similar treatment indicative of the same expressed intention to treat it differently, and to separate it apart, from the remainder of the phrase.

In making this analysis, we should point out that our definition of terms used was derived from "Webster's New Collegiate Dictionary", an ordinary publication, in daily use, readily available to the Courts, to the Commission, and to counsel.

The only interpretive evidence offered in the record was offered by Appellant's two expert witnesses whose testimony conforms with this inevitable conclusion.[6]

The Commission Approach.

Under the misnomer of "interpretation", the Commission in its analysis, an error into which the Court below

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[6] Testimony of Dr. Peter Hilty, Associate Professor of English, Park College, Kansas City, Missouri, and Rev. William Albert Diebold, Associate Professor of English, Rockhurst College, Kansas City, Missouri, recorded in the transcript of the record beginning at pages 49 and 122.

was led, erroneously held that the well established and long recognized rules of construction of the English language did not apply to Certificates issued by the Commission. The Commission adopted this approach apparently for bringing into operation the well established rule that the Commission is vested with authority to interpret its Certificates and that the Courts will respect such interpretations if they are not arbitrary, do not constitute an abuse of discretion, are not contrary to law, and do not unlawfully deprive a party of its property without due process of law.

We subscribe to that rule, but we assert that there is nothing therein which constitutes the members of the Interstate Commerce Commission a body of experts in the field of the grammatical construction of plain, clear, and unequivocal English language. So where the Commission adopts a tortured and distorted view of basic and underlying rules of English grammar, it has gone outside the applicable rule of established law. And, therefore, that rule on which the Commission would have this Court rely, has no application.

The issue before the Commission was not, and the issue now is not, an interpretation of the generic terms making up the commodity description, but is simply one of the correct grammatical construction of plain, clear, and unambiguous words. As stated differently, the issue before the Commission was not, and the issue before the Court now is not, what constitutes "machinery" or "materials" or "oil field equipment", but the issue was whether or not the Certificate by its terms authorized the transportation of "machinery", "materials", and "oil field equipment".

The Historical Approach.

This approach might be characterized "how the parties treated it," for the Courts have frequently taken

such into consideration in trying to determine the proper interpretation of language.

It is an elementary, even axiomatic, fact that a certificated motor common carrier cannot perform transportation for hire until the rate to be paid for that hire has been lawfully established. In this instance, the Commission has established regulations requiring that "every motor carrier by motor vehicle shall file with the Commission . . . tariffs showing all of the rates, fares, and charges for transportation . . . The Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations . . ." (Interstate Commerce Act, Section 317; Title 49 U. S. C., Section 317.)

Surely the Commission, having authority, the power and the duty to reject an improper tariff which does not meet its requirements, would not accept a tariff covering transportation which it considers unlawful.

Similarly, it would be a vain thing indeed for a motor carrier to file a tariff for transportation which the carrier recognized as being unlawful for it to perform.

Yet, the inescapable fact remains that Appellant had on file for nearly 10 years tariffs which cover the transportation of "machinery" and "materials" not even vaguely connected with "oil field." In the exercise of its recognized "cumulative expertise," the Commission accepted these tariffs, did nothing for 10 years to challenge their propriety, and, thus, induced Appellant to expend time, effort, and money in building up, maintaining, and expanding a motor carrier service that has performed for the general shipping public an efficient, expeditious, and economical transportation service which ought not now be denied merely by an administrative fiat called interpretation. We must respectfully inquire wherein lies the authority in the motor transportation act for the Commis-

sion to set aside a Certificate because thereunder a carrier can transport commodities other than "oil field" commodities. The Commission said:

> "If we let this Certificate stand as it is written, and as tariffs have been issued thereunder, the plaintiff will be recognized to have authority to transport general commodities, and such authority we do not *propose* to recognize." (Emphasis added.)

What is the inherent vice which the Commission purports to find in permitting the Appellant to transport commodities other than "oil field" commodities when the Commission has authorized it so to do in plain, unvarnished English, and has accepted its tariffs for so doing?

In other words, why should not Appellant be permitted to continue to perform the transportation which it and its predecessors have performed for years under lawful tariffs issued by Appellant and accepted by the Commission, and performed under a solemn, formal and precisely drafted Certificate lawfully issued by the predecessor members of the present Commission?

That the Commission does not presently *propose* to recognize the authority of Appellant to transport anything other than "oil field equipment" and "oil field machinery" and "oil field materials" is not an adequate legal basis for the withdrawal, the rewriting, the restriction, the modifications and changes, all by interpretation, of a lawfully, properly issued Certificate.[7]

It is the position of the Appellant that the attempted "interpretation" of its Certificate deprives Appellant of its property, and that this deprivation arises out of an attempt by the present members of the Commission, in

[7] Such change or revocation may only be lawfully accomplished pursuant to the provisions of Section 312 (U. S. C. A., Title 49, par. 312).

April, 1962, to read into a Certificate which their predecessors, in 1941, issued, something that is not there. None of the members of the Commission, as now constituted, were members of the Commission in 1941, and therefore we submit that it is completely immaterial what the present Commission now thinks it might have done if it had acted on the initial application for the Certificate. It is equally unimportant what this Commission presently thinks that the Commission in 1941 established, as being the rights conferred on this Appellant, particularly in view of the fact that the Commission itself has long held that in such instances the authority speaks for itself.[8]

Similar Certificates.

Printed herein as an Appendix is a list of more than 200 examples of commodity descriptions in Certificates, identified by number, date, and name of holder, all issued by the Interstate Commerce Commission. The purpose of supplying this exhaustive list is to demonstrate the methods used by the Commission to evidence its intention that an adjective modify or limit succeeding nouns in Certificate commodity descriptions. From this list it will be seen that to do so, the Commission adopts one or more of the following: repetition of the adjective before each noun it is to define, continuous and undivided underlining, or a succeeding restriction by express reference to intended use.

This is a time-honored, consistent, and almost invariable practice. But, such a practice was not followed here. Instead, the adjective was positioned only adjacent to the noun it limits, separated by accepted methods, a comma and individual underlining, from those nouns which it was not intended to limit or modify.

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[8] See *Sims M. Transport Lines, Inc.—Revocation of Certificate*, 66 M. C. C. 533, and cases cited, infra.

ARGUMENT.

The prime contention raised by the motion to affirm appears to be a modern day version of an ancient argument that once bore the appellation of "begging the question". It assumes a premise, then proceeds to argue the correctness of the premise only by the weight of that presumption, with support neither in logic nor in law.

The clear error in the conclusion of the Commission, and of the Court below, is more aptly demonstrated by the diversity of the means of reaching that conclusion.

For example, the Commission says "*there being no ambiguity in the considered wording*" we conclude that respondent's (Appellant's) Certificate is unambiguous. Therefore, the position of Appellant is not tenable.

The District Court says "*since as written the language in question is patently ambiguous*" the position of Appellant is untenable.

The lack of a *rational basis* for this conclusion, irrespective of the means by which it is reached, is the principal concern of Appellant. Both the Commission and the Court below have approached the problem of the interpretation of Appellant's Certificate from the back or side door, ignoring a readily available front door approach that has stood wide open throughout the controversy. Never, at any point, was the Commission called upon to define what constituted "machinery" or what constituted "materials". The only question was whether the Certificate did, in fact, authorize the transportation of machinery or materials, other than oil field machinery and oil field materials.

The issue before the Commission was not, and the issue before this Court is not, an interpretation of the generic terms making up the commodity description, but the issue is clearly one of the correct grammatical construc-

tion of a plain, clear, concise, and unambiguous phrase. In other words, we are not here concerned, and the Commission should not have been concerned, with an interpretation of what constitutes "oil field equipment" or "machinery" or "materials".

In the motion to affirm the appellees raise, as might be anticipated, the well established rule that the Commission's interpretation of a Certificate is controlling upon the Courts unless it is clearly erroneous, and the further proposition that the Courts will not disturb such interpretations unless they are found to be arbitrary, not supported by the evidence, not in abuse of discretion, and would not lawfully deprive a party of his property without due process of law. With the general principle involved, we have, of course, no argument. But, we do have argument with the application of that principle to the instant matter.

Even though the Commission may be composed of individuals who are experts in the transportation field and have developed that which is known as "cumulative expertise", there is nothing about this which waves any magic wand over the situation, or which constitutes them, any more than the Courts or anyone else, experts in the field of the English language.

This argument clearly overlooks the fact that the only evidence in the record below of the meaning of the words contained in the Certificate in question was the evidence of the two professors of English who testified on behalf of Appellant.

Clearly, were there countervailing evidence, the Court below and the Commission might have taken the view that they could reject some evidence, rely on other evidence, and thereby reach the conclusion which was reached. But the situation is different here in that there was *no other evidence* offered on the part of any of the parties, and, therefore, the Commission, to reach the conclusion

which it did, and the Court below to affirm that conclusion, had to disregard completely the *only* evidence in the record and base their conclusions on a lack of evidence.

This is unlawful.

Much has been said, and much has been made, of the fact that as viewed by the Commission the interpretation of Appellant's Certificate on which the Appellant relied would be "unprecedented" and because of this feeling on the part of the Commission, as now constituted, it ingrafted into the Appellant's Certificate the so-called "Mercer description."

In order to reach this most unusual result, the Commission, as now constituted, had to decide in 1962 what the Commission, as then constituted, was thinking in 1941 and base its decision of what the Commission thought in 1941 on an opinion of the Commission which was issued May 24, 1962.

Obviously, for the Commission to say in 1962, that the Commission in 1941 intended to grant to Appellant a commodity description which was evolved in 1946* defies not only logic, but accords to the 1941 Commission a clairvoyance with which it has not been afflicted. It is completely and utterly immaterial what the Commission now thinks that it might have done had it been sitting in 1941 when the original Certificate was issued, for the Commission has long since established the rule, that if a Certificate is not indefinite and not ambiguous, it should be construed by the Commission according to the terms of the Certificate itself, regardless of what may have been intended at the time the Certificate was issued.

For example, in *Sims M. Transport Lines, Inc.—Revocation of Certificate*, 66 M. C. C. 533, the Commission says at page 556:

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* The so-called "*Mercer*" decision was decided May 24, 1946 and is reported 74 M. C. C. 459.

"In construing motor carrier authority, consideration may properly be given to the record upon which such authority was granted, and other extraneous matters 'only' if the authority is itself indefinite or ambiguous. *If not patently indefinite or ambiguous, it must be construed according to its terms regardless of what may be intended.*" (Emphasis supplied.)

Also, in *Coastal Tank Lines, Inc. v. Charlton Bros. Transportation Company, Inc.*, 48 M. C. C. 289, the Commission, at page 299, said:

"While it is true, as pointed out by complainants, where the terms of a Certificate are patently ambiguous, as was the case in *Manhattan Coach Lines, Inc. v. Adirondack Transit Lines*, 43 M. C. C. 477, it is proper to consider antecedent matters in order to ascertain the true meaning. There is no ambiguity in the language of the defendant's Certificate here. The only question here is whether the defendant is conducting unauthorized operations. *The answer to that question must be found in the language contained in the Certificate.*" (Emphasis added.)

Then, it said, at page 301:

"Here there is no ambiguity in the terms of defendant's Certificate, to the extent in question, *and only the terms of the Certificate may be looked to in determining its operating* rights." (Emphasis added.)

The date of January 18, 1941, origin date of the Certificate in question, is important, in that while the body of "cumulative expertise" of the Commission has grown substantially, and the personnel constituting the Commission has changed completely, the language then in common use and still in use today remains the English language, the rules of interpretation and grammatical construction of which have not changed one whit.

An oil field is still an oil field, equipment is still equipment, machinery is still machinery, and materials are still materials today, just as they were in 1941. A comma is still a comma and an underline is still an underline.

The significance of the underlining, which the Commission has only recently chosen to ignore, despite the fact that it was pointed out to the Commission as being of some material consequence with the issuance of the Certificate on March 9, 1956, has always been regarded by the Commission as being substantive.

In *Pierce Auto Freight Lines, Inc. v. Converse*, 54 M. C. C. 447, 451, the Commission had under consideration a Certificate which it described as follows:

> "Thus, the disputed description authorizes the transportation (1) of machinery and machinery parts, and (2) of mining and construction materials, equipment and supplies."

Because of the underlining, the Commission held that the equipment and supplies to be transported must be mining and construction equipment and supplies. To quote the Commission, it said:

> "We think that the meaning of the term 'mining and construction materials, equipment and supplies' as that term is used in defendant's Certificate is quite clear and that there is no sound basis for the tortured interpretation urged by him to the effect that the words 'equipment' and 'supplies'' are not modified by the words 'mining' and 'construction' either in the actual wording of the Certificate or otherwise. In support of his contention, defendant introduced the testimony of the Dean of Men of the City College of San Francisco and two professors attached to the English Department of that institution. They expressed the opinion that in view of the punctuation used in the Certificate, the words 'equipment' and

'supplies' were not modified by the words 'mining' and 'construction' and that the term in question actually involved three different groups of commodities, namely, (1) mining and construction materials, (2) equipment of all kinds and without limitation, and (3) supplies of all kinds and without limitation. *In reaching this conclusion, they ignore the facts of the underlining in the Certificate, although one admits that the use of the underlining indicates an intention to consider the words as a single group.*" (Emphasis supplied.)

Thus, it is established that the Commission considers underlining to be an appropriate method of indicating the applicability of an adjective to a series of nouns. In this connection, the Commission had this to say at page 7 of its report and order to which our complaint is addressed:

"When seeking to restrict 'materials' authority or any other authority to the appropriate industry, we used a limiting adjective. Such a modifier is repeated throughout a series of nouns (as in the voluminous list of examples supplied by respondent [Appellant here])* whenever it is felt at the time of drafting that such a technique is necessary or desirable in order to convey the thought intended, without ambiguity. However, where, as here, only one interpretation is consistent with common knowledge, common sense, we do not always offend the intelligence and patience of the reader by repeating the obviously intended limitation throughout. Of necessity, the language used in commodity descriptions is frequently cumbersome and we naturally attempt to eliminate unnecessary verbiage in some of the more obvious situations."

What the Commission is undertaking to do in this document written in 1962 is to express the feeling of the 1941 Commission "at the time of drafting" which, on its face,

* This reference is to the Appendix attached hereto.

is an obvious impossibility. In addition, the statement, "However, where, as here, only one interpretation is consistent with common knowledge, common sense . . ." is a mere conclusion, as distinguished from a finding, and finds *absolutely no support in the record.*

In addition, the statement of the Commission, ". . . we do not always offend the intelligence and patience of the reader by repeating the obviously intended limitation throughout . . ." is directly in opposition to the Commission's actions evidenced by the Appendix hereto, recognized in the quotation above from the Commission.

Yet, note our Appendix reference to Certificates where the Commission intended to, and did, restrict service to oil-field operations by the use of underlining. For instance in No. MC-89453, N. J. McLandrich, the commodity description, except for the underscoring, is similar to that in the case at bar and is as follows:

> "Oil-field equipment, materials and supplies, over irregular routes."

And in this connection see, as well, the other examples in our Appendix in No. MC-89048, George T. Shriver,

"oil and gas field equipment and supplies."

and No. MC-95287 E. F. Butler,

"oil-field equipment and supplies."

and No. MC-93884, B & C Tankers, Inc.,

"oil-field equipment and supplies."

and No. MC-89158, Sub 1, Bill Frady and Company,

> "Oil-field equipment, machinery, materials, and supplies."

If the purpose of the case at bar was to "eliminate unnecessary verbiage" why should this one incident stand out alone as being the only such case in which the Commission,

although it was once called upon to correct, has issued the Certificate in the manner in which it has been issued? Further, why did the Commission not also "eliminate unnecessary verbiage" in the more than 200 examples cited?

This leads to the conclusion that if Appellant's Certificate is to be rewritten, modified, or altered by the process of "interpretation" it must be done in the face of all evidence to the contrary and in the face of an established custom, practice and precedent of the Commission likewise to the contrary.

This has been recognized by the Commission; for instance in *Builders Express, Inc.—Interpretation of Certificate*, 51 M. C. C. 103, the Commission said:

> "A grant of motor carrier authority which identifies the commodities to be transported by reference to their intended use generally is undesirable, but, in some cases, authority couched in such terms is the only practicable means whereby a carrier may be permitted to perform a complete service, and at the same time be restricted to operations in a particular field."

As we have mentioned earlier, another device used by the Commission to denote a restriction on all nouns in a series without repetition of the preceding adjective, is by continuous underscoring of which there are numerous examples in the Appendix.

Such a correction was apparently attempted by the Commission when it was called upon to reissue the Certificate in the name of J. B. Acton, Inc., after its formation, when the commodity description was changed so as to read:

"Oil field equipment, machinery, and materials."

When the error of this alteration was called to the attention of the Commission and the facts of its unlawful rewriting and restricting the operating authority of the

carrier was mentioned, the Commission then issued, *nunc pro tunc*, the "corrected Certificate of Public Convenience and Necessity" whereby the original commodity description was restored, as follows:

"Oil field equipment, machinery, and materials."

It is apparent that the cumbersome and unwieldy procedures of the Commission would not have been set in motion purely for the purpose of remedying and correcting an error in underlining, unless such underlining was by the Commission considered to be a matter of substance and determinative of the actual authority which the holder of this Certificate, and its antecedents had from "grandfather clause" days.

In light of the examples in the Appendix, and regarding the obviously approved operations of the holders of the various Certificates, i. e., S. R. Hazelrig, Acton, individually, and J. B. Acton, Inc., conducted under published tariffs accepted by the Commission, it is established that Appellant's authority to transport "machinery" and "materials" is not limited by the Certificate to the transportation of "oil field machinery" and "oil field materials".

Section 10 of the Administrative Procedure Act, Title 5 U. S. C. 1009, requires the Court to set aside agency action which is not found to be supported by substantial evidence. In this instance, we find that the conclusion was not supported by *any* evidence, and in fact to the contrary, was reached in utter disregard of the *only* evidence on the point.

If the Commission's conclusions were deemed to be correct, there is no reasonable excuse for the failure of the Bureau of Inquiry and Compliance of the Commission to produce one or more experts to support the conclusion of

the Commission on the question of the grammatical construction of the Certificate in question.

This it did not do.

Appellant produced the testimony of two eminent scholars, well versed in grammatical construction.

One of these, Dr. Peter Hilty, is an Associate Professor of English at Park College, Kansas City, Missouri, the recipient of three degrees in English from the University of Missouri: a Bachelor's degree, a Master's degree, and a Doctor's degree.

The other was Rev. William Albert Diebold, an Associate Professor of English, at Rockhurst College in Kansas City, the holder of a Bachelor's degree in philosophy with a minor in English, a Master's degree in English with a minor in philosophy, and a Sacred Theological Licentiate (STL) with a minor in English, all from St. Louis University. Their evidence was the *only* evidence offered by anyone on the interpretation question.

Yet, despite the fact that this was the only evidence, and was totally uncontradicted, it has been completely overlooked, brushed aside, relegated virtually to limbo, and for it has been substituted a conclusion, as distinguished from a finding, of the Commission which is supported by *no evidence whatsoever*. And the Commission has undertaken to do that which it has repeatedly said may not be done. It has rewritten by interpretation a validly subsisting Certificate.

In *Coastal Tank Lines, Inc. v. Charlton Bros.*, 48 M. C. C. 289, 302, the Commission said:

> "While it may be that when the Certificate was originally issued to the defendant, petroleum products, in bulk, in tank trucks, should have been ex-

> cepted by the grant of authority, they were not, and *we may not now* by interpretation, so modify the Certificate. Such action in the circumstances here disclosed would amount to a partial revocation of the defendant's Certificate without benefit to it of the procedure provided in Section 212 (a) of the Act." (Emphasis added.)

This Court has had occasion to pass on the identical proposition on a case originating from the Commission in which this rule was applied.

In *Watson Bros. Transportation Company, Inc. v. Interstate Commerce Commission*, the Court said:

> "However, when a Certificate has been purchased by a vendee, and an error is made in the writing or rewriting of the Certificate, or in those instances where the Commission has issued an erroneous Certificate as a result of its report in a proceeding involving public convenience and necessity, the Certificate cannot be withdrawn by the Commission and rewritten." *Watson Bros. Transportation Company, Inc. v. United States and Interstate Commerce Commission*, 135 Fed. Supp. 905, affirmed, 350 U. S. 927, 76 Su. Ct. 302.

We do not quarrel with the rule that the findings of the Commission on *disputed questions of fact* are not subject to review. But that rule has no application where the findings are made in a total vacuum of evidence to support such findings.

> "To be sure, the Commission's findings are not binding in the sense that attack cannot be made on them for lack of evidence." *Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88, 91-94, 33 Su. Ct. 185, 186, 188, 57 Law. Ed. 431, referred to in *Denver and Rio*

Grande West Railroad Company v. Union Pacific Railroad Company, 351 U. S. 343, 76 Su. Ct. 982, 992.

As stated in *United States v. Drum*, 368 U. S. 370,

> "The Commission is not a freewheeling agency that can impose its ideas on this industry by fiat. Congress has provided the standard by which the Commission must adjudicate each case. And it is required to make not only findings that support its decision . . . but also findings that are intelligible and complete."

In accordance with that rule, it is the judicial function, and not an administrative one, to determine the limits of the statutory power of the Commission, and, therefore, the duty of the Courts to determine whether or not the administrative agency has acted within the scope of its statutory authority. *American Trucking Association v. United States*, 101 Fed. Supp. 710, affirmed 344 U. S. 298; *Social Security Board v. Nierotko*, 327 U. S. 358.

Deference to Commission action does not require sustaining an action premised upon erroneous standards or unsupported by substantial evidence. *United States v. Carolina Carriers Corporation*, 315 U. S. 475; *Schaffer Transportation Company v. U. S.*, 355 U. S. 83; *Interstate Commerce Commission v. J-T Transport Company*, 368 U. S. 81; Section 10 (e), *Administrative Procedure Act*, Title 5 U. S. C., Section 1009 (e).

Basic Administrative Law Required Statutory Court to Remand to Commission When It Was Unable to Agree With Commission's Basis for the Ultimate Finding.

In cases in which the Court has been called upon to determine whether or not lower Courts, and the Commission, have properly implemented the declared policies of Congress, particularly the National Transportation

Policy which Congress adopted as a preface to the National Transportation Act, this Court has said that:

> "We look to the Commission's own summary of evidence and particularly the findings, formal or otherwise, which the Commission has made." *Schaffer Transportation Company v. United States*, 355 U. S. 86, 88, 78 Su. Ct. 173, 175.

In the instant case, the Commission found:

> "We conclude that the respondent's Certificate is *unambiguous* and that the adjective "oil field" modifies "materials" and "machinery" as well as "equipment". (Emphasis added.)

The Commission went on further to interpret the Certificate to mean that the Appellant was entitled to transport *only* (1) oil field equipment, (2) oil field machinery, and (3) oil field materials; and that this operating authority is limited to such equipment, machinery, and materials as are commonly limited in their use to the oil field industry or are clearly identifiable as being intended for use by the oil field industry."

The rational basis found by the Statutory Court below, in which the ultimate finding of the Commission, which restricted the activities of Appellant to those of an oil field hauler was sustained is as follows:

> "Since as written the language in question is *patently ambiguous* and susceptible of varying constructions, this Court should not substitute another construction for that of the Commission." (Emphasis added.)

How can this be? The finding of the Commission and the finding of the Statutory Court are mutually incompatible. What, in effect, the Court has said is that the finding of the Commission is absolutely and irrevocably

wrong, and the Court has therefore found diametrically to the contrary. Nevertheless, the same conclusion is reached by the Commission and by the Court on these incompatible, opposite, and mutually inconsistent findings.

Perhaps by way of justification, the Statutory Court below went on to say:

> "There was no showing of any history of transportation of machinery and materials other than oil field equipment, oil field machinery, and oil field materials under the 'grandfather' permit. If the history had clearly demonstrated that the 'grandfather' permit covered machinery and materials generally, *the decision might be different;* however, no such history appears in the record." (Emphasis added.)

Apparently the Court would have Appellant, in the face of the Commission's finding of unambiguity, to retry its "grandfather clause" right to a presumptive Certificate as of June 1, 1935, the "grandfather clause" date (49 U. S. C., Sec. 306). Thus to justify the affirmance of a conclusion of the Commission, when there is total disagreement as to the findings on which the conclusion is based, does unrestrained violence to the requirements of administrative law and procedure.

This Court has said:

> "Just as we would overstep our duty by undertaking to evaluate the evidence according to our own notions of the public interest, we would shirk our duty were we similarly to approve the Commission's evaluation of the record without determining that the agency's evaluation had been made in accordance with the mandate of Congress." *Schaffer Transportation Company v. United States*, 355 U. S. 83, 88, 78 Su. Ct. 173, 175.

This Court has further said:

> ". . . We emphasize a simple but fundamental rule of administrative law. That rule is to the effect that a reviewing Court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, *must judge the propriety of such action solely by the grounds invoked by the agency.* If those grounds are inadequate or improper, the Court is *powerless to affirm the administrative action* by substituting what it considers to be a more adequate or proper basis. To do so would propel the Court into the domain which Congress has set aside exclusively for the administrative agency." *Securities and Exchange Commission v. Chenery Corporation*, 332 U. S. 194, 195, 67 Su. Ct. 1575. (Emphasis added.)

More recently, this Court has had another occasion to restate the proposition in this language:

> "An agency's discretionary order must be withheld if at all *on the same basis articulated in the order by the agency itself* . . . For the Courts to substitute their or counsel's discretion for that of the Commission is compatible with the ordinary functioning of the process of judicial review. This is not to deprecate, but to vindicate the administrative process. . . ." *Burlington Truck Lines v. United States*, 371 U. S. 156, 169, 83 Su. Ct. 239, 246. (Emphasis added.)

It has been otherwise stated by this Court in the following language:

> "Once the Commission's reasoning for a conclusion is found wanting, the *conclusion is necessarily impaired* . . . The justification the Commission has given cannot be rejected and *a new justification found by the Court* to satisfy the requirements of a foundation

for judicial review." Dissenting opinion, Mr. Justice Frankfurter, *Denver and Rio Grande West Railroad Company v. Union Pacific Railroad Company*, 351 U. S. 324; 340-41, 76 Su. Ct. 982, 992. (Emphasis added.)

It is clear that any other rule would play havoc with the existing relationship between the administrative and the judicial processes. Were it otherwise, the work of the administrative agencies of our government would devolve upon the Courts, which, in most instances, are already sufficiently burdened.

It is sufficient that the Courts are called upon to review, and upon the finding of clear error, as here, to reverse and remand to the administrative agency for correction.

Assuredly, the Courts should not be called upon to weigh evidence, but where the Court meets the situation where a finding is supported by no evidence, and is determined to be one with which the Court cannot find any agreement, it should not hesitate to correct. In such a situation, it should not be called upon to, nor should it take, the onerous task of reconciling a lack of facts with a clearly unsupported conclusion. Nor should it take upon itself the task of reconciling a rejected finding with any conclusion.

As pointed out above, to do so is violative of established administrative law and thus equally violative of due process.

CONCLUSION.

Thus, Appellant respectfully presents to the Court that the matters considered here are of obvious importance to Appellant. The lifeblood of its business is at stake, but this affects only Appellant.

The National Transportation Policy is endangered by the decision below, but this affects only the shipping and the transporting public.

A seriously basic question of administrative law is presented, but this affects only citizens of the United States.

For the reasons advanced, Appellant earnestly and respectfully urges the Court to overrule the motion to affirm and order this case set for plenary consideration upon briefs and oral arguments. For this Appellant will ever pray.

Respectfully submitted,

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Certificate of Service.

I, James W. Wrape, one of the attorneys for Appellant, J. B. Acton, Inc., and a member of the Bar of the Supreme

Court of the United States, hereby certify that on the .... day of March 1964, I served copies of the foregoing Appellant's Brief in Opposition to Motion to Affirm filed in the Supreme Court of the United States on the several parties as follows:

1. On the United States by mailing copy, duly addressed and postage prepaid to Honorable Archibald Cox, The Solicitor General, Department of Justice, Washington 25, D. C.; Mr. Lee Loevinger, Assistant Attorney General, Department of Justice, Washington 25, D. C.; Mr. William H. Orrick, Jr., Assistant Attorney General, Department of Justice, Washington 25, D. C.; Mr. John H. B. Wigger, Attorney, Department of Justice, Washington 25, D. C.; Mr. Robert B. Hummel, Attorney, Department of Justice, Washington 25, D. C.; Mr. Michael I. Miller, Attorney, Department of Justice, Washington 25, D. C.; and to Mr. S. Russell Millin, United States Attorney, 549 United States Court House, Kansas City 6, Missouri.

2. On the Interstate Commerce Commission, by mailing copy duly addressed and postage prepaid, to Mr. Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington 25, D. C.; Mr. James Y. Piper, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.; and Mr. Francis A. Silver, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C.

3. Upon the intervenors herein by mailing copy, duly addressed and postage prepaid to Mr. Tom B. Kretsinger, Kretsinger and Kretsinger, Attorneys at Law, 510 Professional Building, Kansas City 6, Missouri.

JAMES W. WRAPE,
Attorney for Appellant herein.

APPENDIX

ABSTRACT OF COMMODITY DESCRIPTIONS WHERE THE MODIFYING ADJECTIVE IS REPEATED BEFORE EACH NOUN OR CONTINUOUS UNDERSCORING IS EMPLOYED

Docket No. M.C.	Date	Carrier	Commodity Description
222 Sub 2	4/21/61	New York Consolidated Freightways, Inc.	Steel, steel moulding, steel frames, steel shelving, steel doors, etc.
475	8/9/50	Wymore Trans. Co.	Paper, paper products, paper mill supplies, machinery, and equipment:
704	3/13/58	Willett Pipe Stringing Corp.	Pipe, pipe line material, machinery and equipment
705	4/11/55	Floyd Kingle	Threshers and thresher repair parts
730 Sub 52	3/29/56	Pacific Intermountain Express	Petroleum and petroleum products Chemical and chemical solutions. Milk and milk products
730 Sub 61	5/17/56	Pacific Intermountain Express	Asphalt, Asphalt products, and heavy fuel oils
730 Sub 82	2/28/57	Pacific Intermountain Express	Fertilizers and fertilizer solutions
730 Sub 128	1/9/61	Pacific Intermountain Express	Frozen fruits, frozen berries and frozen vegetables
760	8/17/60	Carl L. Block	Farm Machinery, farm machinery parts
873	6/24/60	Sooner Freight Lines	Plaster and plaster board
504 Sub 21	5/29/57	Harper Freight Lines	Plastic bottles and plastic vials
504 Sub 29	10/17/57	Harper Freight Lines	Textiles and textile products Cotton and cotton piece goods Cotton and cotton goods
531 Sub 41	12/4/51	Younger Bros. Inc.	Petroleum and petroleum products
587	7/6/53	Hart Transfer	Washing machines and washing machine parts
591	11/30/55	Lincoln-Dixie Frt. Lines	Wire and wire products
1065	4/22/49	Oscar Pegerson	Farm products, farm machinery and implements
1068	1/13/61	A. Knoir's Exp., Inc.	Collapsible metal valves and collapsible plastic tubes
1077	2/27/57	Heckerman Trucking Co.	Laundry machinery and supplies, Laundry machinery and parts, stone and stone contractors equipment

Docket No. M.C.	Date	Carrier	Commodity Description
1103	3/14/55	Kofmans	Brass bars, Brass rods, and unfinished brass shapes
1150	4/10/58	Heeren Trucking Co.	Petroleum and petroleum products
1176	2/2/42	McKelvey Trucking Co.	Paper, paper boxes, paper products, and packing material
1180	8/24/59	Supreme Trucking Co.	Fire-brick and Fire-Clay
1184 Sub 2	12/30/42	G. F. Burnett	New automobiles, new trucks and new chassis
1184 Sub 4	11/14/50	G. F. Burnett	New automobiles, new trucks and new chassis
1233	1/26/51	Loraine Trans. Exp.	Roofing and roofing materials
1328 Sub 6	11/3/50	J. J. Long, Inc.	Mineral and Mineral wool products
1351	3/7/42	M. Haskell	Paper, waste paper and paper products.
1351 Sub 4	10/3/42	M. Haskell	Paper skids, paper cases and waste paper
1353	8/27/42	M. H. Hummell	Soap, soap powder, soap products
1485 Sub 4	9/15/60	Scholl Transportation	Frozen fruits, frozen berries, and frozen vegetables
1571	4/29/57	John Budderman	Farm Machinery, Farm Supplies
1706	8/16/55	Allied Transfer and Storage	Paper, paper products, and waste paper
1839	7/29/42	Smith's Gen. Trucking Co.	Textile materials, textile machinery, etc.
2100	2/1/50	C. E. Findley	Brass rods, brass scrap
2165 Sub 9	10/19/60	Landon Truck Lines	Frozen fruits, frozen berries, and frozen vegetables
2253	5/29/59	Carolina Freight Car Carriers Corp.	Textile, textile products, textile machinery, textile machinery parts (2) textile machinery, textile machinery products
2260	2/14/47	M. J. Beit & Son	Paper, paper products and waste paper
2374	5/20/42	Cecil Hart	Cotton seed and cotton seed products
2392 Sub 15	4/27/59	Wheeler Trans. Serv.	Fertilizers, fertilizer solutions, fertilizer mixtures
2473 Sub 12	7/1/55	Billings Transfer Corp.	Textile and textile products

Docket No. M.C.	Date	Carrier	Commodity Description
2484	4/19/59	E & L Transport	New automobiles, new trucks, new trailers, new bodies, new cabs, new chassis and automobile parts and accessories.
2512	3/9/61	City Transfer & Storage Co.	Power boats, power boat equipment
2535	7/24/59	N.L. & B Transportation, Inc.	Scrap metals, scrap rubber
2442 Sub 4	11/1/56	Adley Exp. Co.	Peanuts and peanut products veneering and veneering materials Peanuts, peanut butter, peanut butter sandwiches, peanut oil, peanut products
2630	10/30/42	Tom Still Transfer Co.	Brass and brass tubing
2633 Sub 19	8/33/46	W. F. Crossett	Petroleum and petroleum products
2754	8/8/60	Nevendorf Trans. Co.	Machinery, machinery parts
2776	10/18/60	J. Janolis Trucking Co.	Sugar and sugar products
2897	3/21/57	Ames Motor Trans. Co.	Lumber and lumber products Wooden boxes and wooden box shooks
2900	11/8/57	Great Southern Tkg. Co.	Paper and paper products
2912	4/17/51	Burlington Truckers	Rayon yarn, rayon products, and empty rayon containers
3076 Sub 10	2/4/53	Karns Transfer, Inc.	Synthetic yarn, synthetic fiber, synthetic stable fiber, synthetic fiber products, rayon yarn, rayon products
3076 Sub 11		Karns Transfer, Inc.	Synthetic yarn, and synthetic stable fiber
3246	4/30/61	Masterson Transfer Co	Machinery, machinery parts
3474	4/12/52	Mundy Motor Lines	Rayon Fiber and rayon yarn Textile products, textile machinery, empty textile containers
4394	8/26/43	G. D. Elmore	Cotton seed hulls and cotton seed meal
4428	10/13/48	A. Sangusgni Sons Co.	Contractors machinery Contractors supplies
4815 Sub 3	1/21/59	Ralph Linstrom	Concrete blocks and concrete bricks
5267 Sub 11	4/8/60	Atwood Truck Line	Limestone, limestone products, and limestone by-products

Docket No. M.C.	Date	Carrier	Commodity Description
5382	8/11/37	Ralph Whitehead	Fertilizer and fertilizer products
6380 Sub 4	8/19/58	Truesdell, Inc.	Paper and paper products
6607	4/10/53	J. J. Minnehan, Inc.	Cotton and cotton waste
7335	8/5/43	J. M. Donley Truck Service	Soap and soap powder
7381	5/19/59	Webbs Transfer	Peanuts, peanut meal and peanut oil
7381 Sub 7	4/14/60	Webbs Transfer	Farm tractors, farm tractor parts
7550 Sub 8	6/3/60	William Webb	Gypsum products, gypsum filler and gypsum ground
7953	2/6/50	Dallas J. Peterson	Lumber and lumber products
8388	4/25/56	Joseph M. Callaghan	Petroleum and petroleum products
8660 Sub 1	5/1/61	C. Wells Trans. Co.	Gypsum and gypsum products
10360	6/31/58	T. L. Clurran Transportation	Textile products and textile machinery
10761	4/26/61	Transamerican Freight Lines	Frozen fruits and frozen vegetables
10914 Sub 3	6/8/59	Morrison & New Cartage	Meats, meat products and meat by-products
11207 Sub 157	6/13/52	Deaton Truck Line	Cast iron pipe and cast iron fittings, roofing and roofing materials
11306 Sub 2	12/5/58	Basin Truck Lines	Meat, meat products and meat by-products
11694	1/23/43	Wm. D. Buie	Fertilizer and fertilizer products
Sub 12		Wm. D. Buie	Fresh fruits and fresh vegetables
11899	11/10/60	Stevens Truck Line, Inc.	Frozen fruits, frozen berries and frozen vegetables
13087 Sub 20	5/22/59	Stockberger Transfer and Storage, Inc.	Meats, meat products and meat by-products
14708	10/23/52	Malco Trucking Co.	Paper and paper boxes
14780	1/16/42	George Gosselin	Cotton cloth and cotton yarn
15167 Sub 2	8/18/39	Cullum Trucking Co.	Liquid flox and liquid asphalt
Sub 8	5/8/42	Cullum Trucking Co.	Coke, coke breeze, coke dust and coke screenings
15242	3/24/47	Dowless Transfer	Fertilizer and fertilizer materials

Docket No. M C.	Date	Carrier	Commodity Description
15617	11/9/59	Phils Express, Inc.	Soap and soap products
15727	4/14/39	Bond Transportation, Inc.	Petroleum and petroleum products
15797	6/9/41	Giannetta & Sons	Cork and cork products
15821	10/15/56	Grap Bros.	Paper and paper products
16643 Sub 8	3/2/53	Stem Motor Lines	Milk and milk products Wooden pallets, wooden skids, wooden reels, wooden cradles, wooden boxes, wooden checks, wooden window frames
16682	3/28/56	Mural Transport	Stove fixtures and stove equipment
16903 Sub 17	4/9/59	Horn Freight Lines	Slate and slate products
17037	3/24/58	John Curry	Paper and paper products
17286	3/3/41	Strech Transportation	Paper and paper products
17357	3/24/58	McCoy Truck Lines	Farm tractor engines and farm tractor parts
17605	1/12/39	Edgar Druck	Paper and paper products
18869 Sub 6	8/13/48	Krinver Brothers	Crab scrap and crab meal Fish scrap and fish meal
19193 Sub 2	11/1/50	Lafferty Trucking Co.	Stove fixtures and stove equipment
19727 Sub 32	6/14/39	Leonard Bros. Transfer and Storage	Airplanes, airplane parts and airplane supplies and equipment
20492	2/5/51	Fred S. George & Sons	Paper mill supplies and paper stock, paper, paper products, paper board and box board
22254 Sub 12	8/28/47	Trans-American Van Lines	Uncrated pianos and uncrated musical instruments
22484 Sub 3	4/25/61	Brown Trucking	Wooden skids and wooden cores
23602	12/28/55	Charles B. Richards	Paper and paper products
23939 Sub 85	10/28/59	Asbury Transportation Co.	Liquid Oxygen and liquid nitrogen
25798 Sub 15	12/24/58	Clay Hyder Truck Lines	Meats, meat products and meat by-products
" Sub 32		" " " "	Frozen fruits, frozen vegetables, frozen fruit juices and frozen citrus juice, frozen shrimp and frozen vegetables

Docket No. M.C.	Date	Carrier	Commodity Description
28378 Sub 2	7/10/42	Shores Freight Service	paper and paper products
29680	6/24/41	Roberts Farm Trucking Co.	Fertilizer and fertilizer materials
29977	7/31/58	Grocery Transfer Corp.	Evergreens and evergreen products Marble and marble products Petroleum and petroleum products
29988 Sub 53	4/27/56	Denver-Chicago Tk. Co.	Meat, meat products and meat by-products
30164 Sub 26	1/22/52	Highway Transportation	Fish Oils and fish solubles
30451 Sub 13	12/23/53	Luper Transportation Co.	Meat, meat products and meat by-products
30655	1/10/41	Wilbur Jones	Fertilizer and fertilizer materials
30887 Sub 69	2/1/58	Shipley Transfer	Petroleum and petroleum products
31600 Sub 80	8/6/48	P. B. Mutrie	Petroleum and petroleum products
33582	9/17/43	J. Taylor Trucking Co.	Soap, soap products, soap powders
37157 Sub 1	1/12/60	Louis A. Thievan & Sons	Asbestos and asbestos products
37422	2/1/56	The Capital City Transfer, Inc.	Meats, meat products and meat by-products
37771	3/3/58	Sheeby Drayage Co.	Steel and steel plates
38151	3/18/52	C. S. Henry Transfer	Fertilizer and fertilizer materials Bottling machinery, bottling supplies, bottling caps
38183	5/15/57	Wheellock Bros.	Soap and soap products
38383	2/17/54	Glenn Cartage Co.	Steel and steel products Paper and paper products
39167	7/26/43	Charles J. Rodgers Transportation Co.	Iron and Steel and iron and steel products
39443	2/2/55	Ray E. Thompson & Sons	Farm Machinery and farm implements
39614 Sub 1	7/28/54	A. J. Dunn	Cottonseed cake and cottonseed meal
39966 Sub 1	6/23/53	Leary Transport	Paper, paper stock and paper products

Docket No. M.C.	Date	Carrier	Commodity Description
40021 Sub 2	7/1/55	Consolidated Film Service Delivery	Motion Picture films, motion picture equipment and motion picture supplies
40084	2/7/50	A. B. Campbell	Cotton seed meal, cotton seed cake, and cotton seed hulls
40428 Sub 6	3/31/59	Cross Transportation, Inc.	Plastic containers, plastic caps, plastic closures

EXAMPLES ADDED AFTER DIVISION I ORDER

79577 Sub 24	11/4/49	Oilfields Trucking Company	Oil well drilling rigs and machinery, equipment, materials, and supplies incidental to or used in the drilling and development of oil wells.....
88388	9/16/38	W. B. Barton	Oil-field equipment
89453	9/19/40	N. J. McLardrich	Oil field equipment, materials and supplies, over irregular routes
89048	6/17/58	Geo. T. Shriver	Oil and gas field equipment and supplies
99454	9/10/59	J. L. Clay	Oilfield equipment
95287	3/13/58	E. F. Butler	Oil field equipment and supplies
97884	11/14/57	B. C. Tankers, Inc.	Oil field equipment and supplies
89158 Sub 1	9/9/58	Bill Frady & Co.	Oil field equipment, machinery, materials, and supplies
98757 Sub 2	11/21/57	Thomas D. Lane	Ore, ore concentrates, and machinery and supplies used in development and operation of metal mines, except commodities for human consumption and wearing apparel

Docket No. M.C.	Date	Carrier	Commodity Description
41192 Sub 6	10/14/59	Grand Rapids Mtr. Express, Inc.	Frozen fruits, frozen berries & frozen vegetables
41404	12/24/58	Argo-Collier Truck Lines, Inc.	Frozen bakery products, frozen dinners, & frozen soups
41622	6/26/41	Eastern Motor Lines	Paper and paper products
41635	12/15/47	Dealers Transport Co. Inc.	New automobiles, new trucks, new tractors, new bodies, new cabs, & new chassis
42329 Sub 133	12/11/58	Hayes Freight Lines, Inc.	Asbestos cement conduit or asbestos cement pipe, and asbestos couplings & rubber washers
42329 Sub 134	4/29/58	Hayes Freight Lines, Inc.	Meats, meat products, & meat byproducts
42426 Sub 1	11/30/48	Ben Mozenter	Ground fish meal, & ground crab meat
42487 Sub 383	12/2[illegible]/61	Consolidated Freight-ways Corp. of Del.	Frozen fruits, frozen vegetables, & frozen berries, & frozen fish.
42537 Sub 7	11/22/46	Cassens Transport Co.	New automobiles, automobile bodies, automobile chassis, & automobile parts and accessories moving in connection therewith, automobile show equipment and paraphernalia, ------
42537 Sub 19	6/19/59	Cassens Transport Co.	New automobiles, automobile bodies, automobile chassis & automobile parts and accessories ----------
42828	7/30/58	Theodore Rossi Trucking	Granite & granite products
42919	10/7/49	Coastal Truckways, Inc.	Fertilizer & fertilizer materials
43038 Sub 359	10/4/50	Commercial Carriers, Inc.	Motor vehicles, motor vehicle bodies, motor vehicle cabs & motor vehicle chassis, and show displays, ------
43038 Sub 382	2/17/55	Commercial Carriers, Inc.	Trucks, & Truck chassis
43038 Sub 386	7/10/53	Commercial Carriers, Inc.	New automobiles, new trucks, & new chassis
43038 Sub 407	6/23/59	Commercial Carriers, Inc.	New automobiles, & automobile chassis, -----, and automobile bodies

Docket No. M.C.	Date	Carrier	Commodity Description
43038 Sub 414	2/24/60	Commercial Carriers, Inc.	Motor vehicles (except trailers), motor vehicle bodies, motor vehicle cabs & motor vehicle chassis and show displays -------
43169 Sub 3	4/9/51	Irving E. Oakleaf	Fertilizer & fertilizer compounds
43246 Sub 12	10/9/46	Buske Lines, Inc.	Diary machinery & dairy supplies
43246 Sub 13	8/22/47	Buske Lines, Inc.	Canned vegetables, canned fruits, & canned vegetables and fruit juices
43269 Sub 38	8/24/60	Wells Cargo, Inc.	Manganese ore & manganese ore concentrates, ------
44025 Sub 2	7/9/52	The Columbus-Cincinnati Tkg. Co.	Motion picture films, motion picture accessories & supplies, & motion picture advertising matter, -----
44142 Sub	1/13/60	Schess Motor Freight, Inc.	Slate & slate products
44390	8/1/41	The Lumber Trucking Co.	Lumber & Lumber products
44783 Sub	6/29/44	Mahoning Express Co.	Iron & steel, and iron & steel articles
44783 Sub	6/29/44	Mahoning Express Co.	Tomatoes & tomato pulp
44824	9/2/43	Mucahy's Express	Paper pulp & paper products
45105 Sub 1	3/24/44	Bell Motor Freight, Inc.	Paper, paper products, and paper manufacturing machinery & parts thereof, & papermill products
45163 Sub 4	1/17/50	King Bros. Truck Line, Inc.	Silos, silo blocks & staves, silo doors & frames, silo logs, and silo roofs, chutes & platforms, & incidental materials ----------
46036 Sub 1	10/28/60	Harmers Express, Inc.	Pulpboard and pulp board boxes
48957 Sub 21	5/24/62	Crown Motor Freight Co.	Synthetic yarn, synthetic fibre, synthetic stable fibre, synthetic fibre products ---- ----
48958	1/24/55	Illinois-California Exp.	Contractors supplies & used contractors equipment
49190	1/18/51	Northrop & Bahler, Inc.	Wool & wool products
50069 Sub 249	5/14/62	Refiners Transport	Petroleum lubricating oils & petroleum lubricating oil additives --------

Docket No. M.C.	Date	Carrier	Commodity Description
50069 Sub 252	5/14/62	Refiners Transport	Liquid synthetic resins & liquid glues, --
50175 Sub 3	3/31/58	Earl Adington	Wood poles & wood cross-arms
51012 Sub 16	3/28/62	J. T. Bryant	Paper tea bag wrappers & paper boxes
52657 Sub 297	3/12/47	Arco Auto Carriers	New tractors, new trucks, new trailers, new buses, & their chassis, parts & equipment, new cabs, & new bodies,-------
52704	6/4/58	Glenn McClendon Tkg. Co.	Glass bottles & glass food containers
52729 Sub 14	10/22/57	Fiorot Tkg. Co.	Slate & slate products
52743 Sub 11	2/14/55	Miami Transportation Co.	Butter & butter substitutes Glassware & Glass Containers
52858 Sub 78	1/4/60	Convoy Company	Trucks & truck chassis
53841 Sub 1	12/15/61	W. H. Chrisbe & Sons	Wood dowels, wood grips & wood handles
55766 Sub 3	10/27/52	Mid-America Express, Inc.	Meats, meat products & Meat by-products
55849 Sub 3	12/21/60	Capital Transportation & Crating Co.	Uncrated store fixtures & uncrated hotel and restaurant equipment
57927 Sub 3	7/26/51	Longyears Express, Inc.	Telephone supplies, telephone equipment & telephone parts
59117 Sub 14	5/11/62	Elliott Truck Line, Inc.	Dry fertilizer, dry fertilizer compounds, dry fertilizer ingredients, and dry urea and urea compounds
59206 Sub	2/25/54	Holland Motor Express, Inc.	Pulpboard boxes, pulpboard cartons, and pulpboard fillers ------
60933 Sub 4	3/30/53	Empire Express, Inc.	Automobile parts, automobile accessories, and automobile supplies
61019	4/2/59	Massachusetts Trucking	Fish (including shell fish), processed fish, fish livers, fish oils and fish scrap
61479 Sub 6	2/27/61	Whites Transportation	Liquid silicate of soda and liquid foundry core compounds
61809	7/15/43	Marshall M. Estes	Mining machinery, mining equipment, and mining supplies
61917 Sub 1	2/8/43	H. P. Welsh	Textiles, textile supplies & textile equipment

Docket No. M.C.	Date	Carrier	Commodity Description
70662 Sub	9/8/44	Cantlay & Tanzola	Liquid petroleum & liquid petroleum products
71330 Sub 3	1/5/43	W. Earl Applegate	Fertilizer, fertilizer materials & machinery used in the production of fertilizer
83322 Sub	7/31/58	Links Trucking	Knitting plant machinery and knitting plant machinery parts